

THE ASSAM LAND AND REVENUE
REGULATION, 1886

P.N. GOSWAMI

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The
Assam Land And Revenue Regulation, 1886.

REGULATION I OF 1886.
(AS AMENDED)

FOR STUDENTS

BY
P. N. GOSWAMI, B.Sc, B.L.

1982

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PREFACE

The universities in Assam have included the Assam Land and Revenue Regulation, 1886 (Regulation I of 1886), along with the Introduction written by Sir William Ward, as one of the subjects of study in the Law course. The need of a book on the subject, suitable for students, has been keenly felt. This book, therefore, has been brought out to meet this necessity. A sincere attempt has been made to make the book as exhaustive and as useful to the students as possible. The entire text of the Regulation as amended upto date has been reproduced in the book, and to each Chapter of the Regulation notes have been appended analysing and explaining the important provisions of the Regulation. Important matters referred to by Sir William Ward in his Introduction to the Regulation have been dealt with in the relevant portions of the book. To help the students in their preparation for examination, some university questions bearing upon the subjects have been put in the margin to the notes which would suggest the answer.

It is sincerely hoped that the book will be a useful guide to the students of law in their study of the subject,

**-4th September, 1973
Guwahati-9.**

Pabitra Narayan Goswami

The
Assam Land And Revenue Regulation,
1886
Regulation I of 1886
(As amended)

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**The
Assam Land And Revenue Regulation,
1886**

REGULATION 1 OF 1886
[As amended]

CHAPTER 1

PRELIMINARY

1. (1) This Regulation may be called the Assam Land and Revenue Regulation, 1886; and

Short title,
commencement
and local extent.

(2) It shall come into force on such dates and in such territories under the administration of the State Government of Assam as the State Government may direct by notification in the official Gazette :

Provided that—

(a) any such notification may declare that any portion of this Regulation shall not be in force in any territory to which the Regulation may be extended ; and

(b) the State Government may direct by notification in the official Gazette that any portion of this Regulation shall cease to be in force in any territory to which the Regulation may have been extended.

(3) The State Government may, in like manner, amend, vary or rescind any notification issued under sub-section (2).

Notes:—(1) The Regulation has been brought into force in Cachar, Goalpara, Kamrup, Darrang, Nowgong, Sibsagar and Lakhimpur with effect from the 1st July, 1886. Certain lands are exempted from the operation of Chapter II, vide section 4.

(2) The Regulation with the exception of sections 3-68, 69A-93, 95-144 and 145-159 has been brought into force in the North Cachar Hills with effect from the 28th April, 1930.

(3) The Regulation with the exception of sections 3-68, 89A-93, 95-144 and 145-159 has been brought into force in the Garo Hills district with effect from the 4th October, 1928 and the Khasi and Jaintia Hills, Naga Hills and Lushai Hills districts with effect from the 16th March, 1929. Sub-sections (2) and (3) of section 12 of the Regulation has been brought into force in the Khasi and Jaintia Hills district with effect from the 9th June, 1962.

(4) The Regulation has been brought into force in the tract transferred from the Mokokchung subdivision of the Naga Hills district to the Sibsagar district as defined in Notification No. 1436P., dated the 11th April, 1901, with effect from the 11th April, 1901.

(5) The Regulation was brought into force in the tracts described below:—

(i) The tract transferred from the Naga Hills district to the district of Sibsagar by Notification No. 5646R., dated the 9th December, 1898, as amended by Notification Nos. 988R., dated the 24th February, 1903 and 219R., dated the 29th January, 1923, with effect from the 25th November, 1924.

(ii) The tract transferred from the Naga Hills district to the district of Nowgong by Notification No. 5646R., dated the 9th December, 1898, as amended by Notification Nos. 988R., dated the 24th February, 1803 and 219R., dated the 29th January, 1923 and 1119R., dated the 30th April, 1923, with effect from the 27th December, 1924.

(iii) The tracts transferred (a) from the Balipara Frontier Tract to the district of Darrang as specified in Notification No. RSS. 135/51/4, dated 25th April, 1951 and (b) from the Abor Hills and Mishimi Hills districts (Sadiya Frontier Tract) and the Tirap Frontier Tract to the district of Lakhimpur as specified in Notification No. RSS. 135/51/5, dated 25th April, 1951 with effect from 1st October, 1951.

(6) Regulation II of 1889 came into force on the 21st September, 1889.

(7) Regulation II of 1905 came into force on the 1st July, 1905.

(8) Assam Act XV of 1947 came into force on the 22nd October, 1947.

(9) Assam Act XXII of 1962 came into force on 15th February, 1963.

2. On and from the date on which this Regulation comes into force in any territory, the enactments mentioned in the schedule hereto annexed, in so far as they apply to, or are in force in that territory, and all regulations and rules (if any) in force there relating to any of the matters provided for by this Regulation, shall be repealed. Repeal.

Provided that—

(a) this repeal shall not revive any enactment repealed or affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings commenced, before this Regulation comes in force ; and

(b) all rules prescribed, appointments and settlements made, powers conferred and notifications published under any enactment hereby repealed, and all other rules (if any) in force on the date on which this Regulation comes into force relating to any of the matters hereinafter dealt with, shall (so far as they are consistent with this regulation and could be prescribed, made, conferred or published thereunder) be deemed to have been respectively prescribed, made, conferred and published thereunder.

3. In this Regulation, unless there is something repugnant in the subject or context,— Definition.

(a) “the commencement” of this Regulation, used with reference to any local area, means the date on which it comes into force in that local area ;

(b) “estate” includes—

(1) any land subject, either immediately or prospectively, to the payment of land revenue, for the discharge of which a separate engagement has been entered into ;

(2) any land subject to the payment of, or assessed with a separate amount as land revenue, although no engagement has been entered into with the Government for that amount ;

(3) any local area for the appropriation of the produce or products whereof a license or farm has been granted under rules made by the State Government under section 155, clause (e) or clause (f) ;

(4) any *char* or island thrown up in a navigable river which under the laws in force is at the disposal of the Government ;

(5) any land which is for the time being entered in the Deputy Commissioner’s register of revenue free estates as a separate holding ;

(6) any land being the exclusive property of the Govern-

ment of which the State Government has directed the separate entry in the registers of revenue-paying and revenue-free estates mentioned in Chapter IV;

Explanation.—Any land gained by alluvion or by dereliction of a river to any estate as here defined, which under the laws in force is considered an increment to the tenure to which the land has accrued, shall be deemed to be part of that estate;

(c) "permanently-settled estate" means any estate in the districts of Cachar and Goalpara included in the decennial settlement of the Lower Provinces of Bengal or permanently settled at any subsequent date under any law for the time being in force :

(d) "temporarily-settled estate" means any estate not being a revenue-free or permanently-settled estate :

(e) "land revenue" means any revenue assessed by the State Government on an estate, and includes any tax assessed in lieu of land revenue :

(f) "proprietor" means the owner of any estate permanently settled or entered on the Deputy Commissioner's register of revenue-free estates :

(g) "land-holder" means any person deemed to have acquired the status of a land holder under section 8 :

(h) "settlement-holder" means any person, other than a proprietor, who has entered into an engagement with the Government to pay land revenue, and includes a land-holder :

(i) "recorded proprietor", "recorded land-holder", "recorded sharer", and "recorded possession" mean any proprietor, land-holder, sharer or possession, as the case may be, registered in the general registers prescribed in Chapter IV :

(j) "agricultural year" means the year commencing on the 1st April, or on such other date as the State Government may, in the case of any specified local area, by notification, appoint :

(k) "notification" means a notification published in the official Gazette ; and

(l) "prescribed" means prescribed by rules made under this Regulation.

(m) "Deputy Commissioner" includes and shall be deemed always to have included the Additional Deputy Commissioner.

(n) "Board" means the Assam Board of Revenue constituted under the Assam Board of Revenue Act, 1959 or under any statutory re-enactment or modification thereof.

N O T E S

CHAPTER—1

Preliminary (Ss. 1—3)

Chapter I of the Regulation deals with the commencement and the local extent of the Regulation, and repeals certain Acts and Regulations, and gives legal sanction to the then existing rules and also the appointments and settlements made under enactments repealed by this Regulation. This chapter further deals with the definitions of the various terms.

DEFINITONS

1. Estate :

The word 'estate' in legal phraseology means an interest in real property i.e., an aggregate of rights over land vested in the individual owning the property. Land cannot be the subject of absolute ownership of any individual. The State is the ultimate owner of land, the individual only enjoys certain rights over the land. The word 'estate' in the Regulation is used to mean the land itself. The term 'estate' is defined in the Regulation to include all revenue-paying lands held direct from Government and also the revenue-free lands which are entered as separate holdings in the general register of revenue-free estates maintained by the Deputy Commissioner. Lands exclusively owned by the Government and separately entered in the general registers of revenue-paying and revenue-free estates, and any *char* or island thrown up in a navigable river and at the disposal of the Government are also included within the meaning of the term 'estate'. Any local area the products whereof can be collected under a license granted under the rules is also deemed to be an 'estate'. Such license is granted under the rules framed under section 155 (e) and (f) of the Regulation for collecting rubber, lac or other forest-produce, or to work mines, stones, and lime quarries etc., or to fish in proclaimed fisheries. Further, lands gained by alluvion or by dereliction of a river and annexed to an estate are deemed to be a part of that estate as an increment.

(Under section 4 of the Bengal Alluvion and Diluvion Regulation, 1825 (Bengal Regulation II, 1825) land gained by gradual accession, whether from the recess of a river or of the sea, is to be considered as an increment to the tenure of the person to whose land or estate it is thus annexed.)

Write short notes
on "estate"
(G.U. '62, '68)

The different kinds of estates :

The different kinds of estates or interests in land found in Assam can be considered under the following heads :

(i) The *lakhiraj* estates and estates held in fee-simple, with estates under the Special Waste Land Rules.

(ii) Permanently-settled estates of Goalpara district and Karimganj subdivision of Cachar district.

(iii) Temporarily-settled estates held direct from Government on periodic leases, which include the following different classes :—

(a) revenue-paying estates granted under the Special Waste Land Rules and held at favourable rates ;

(b) *ilam* and modified *ilam* estates of Karimganj subdivision, and all estates settled in Cachar for a term of years ;

(c) the *nisf-khiraj* or half revenue-paying estates ;

(d) the "acknowledged estates" of Bijni and Sidli ;

(e) the *khiraj* or full revenue-paying estates held under periodic leases ;

(iv) Temporarily-settled *khiraj* estates held direct from Government under annual leases.

(v) Special revenue-paying estates.

(i) Lakhiraj and Nisf-khiraj estates :

These estates have a special history of their own. The *lakhirai* estates are revenue-free estates which were granted for religious and other purposes by the previous rulers of Assam, and which were subsequently confirmed by Captain Bogle, the Special Commissioner appointed under Bengal Regulation II, 1828 to enquire into the validity of such grants. Shortly after annexation of Assam the Government of India declared that "all rights to hold land free of assessment, founded on grants made by any former Government, must be considered to have been cancelled by the British conquest. All claims, therefore, for restoration to such tenure can rest only on the indulgence of the Government, without any right." Mr. Scott, the first British Commissioner of Assam, disregarded all claims to hold land revenue-free and assessed all such lands claimed as revenue-free grants under the previous rulers at a favourable rate which was half the prevailing rate for other lands. When objections were raised to the assessments, the Government of India directed a full enquiry to be made into all claims to revenue-free land. The lands claimed as revenue-free grants under the previous rulers (i.e. the Assam Rajas) were grouped into three classes:

Write notes on :

(a) Lakhiraj &
(b) Nisf-khiraj
estates.

(G.U. '77, '81)
D.U. '68)

Write a short history of nisf-khiraj lands of Assam. Describe the nature of the rights nisf-khirajdar has over such lands.
(G.U. '76, '72)

(1) *Debottar* lands i.e., lands dedicated or appropriated to idols or temples, (2) *Dharmottar* lands i.e. lands devoted for religious purposes and (3) *Brahmottar* lands i.e. lands granted to priests and learned people. General Jenkins, who was the Commissioner of Assam at the time, made a broad distinction between the *Debottar* lands i.e. lands dedicated to temples, and lands known as *Dharmottar* or *Brahmottar* which were devoted for some religious or charitable purposes, not being temple lands. In all cases of *Debottar* lands which were found to be bona fide and valid he confirmed the grants revenue-free and these came to be known as *lakhiraj* lands. In the case of bona fide and valid *Dharmottar* and *Brahmottar* grants he simply confirmed the grantee in possession, subject to the payment of revenue at half the ordinary rates originally fixed by Mr. Scott in all cases of lands claimed as revenue-free, until the investigation of the whole *lakhiraj* question had been completed and reported to the Government of India. But no report was, however, submitted to the Government and no final order was passed as to whether the holders of *Dharmottar* and *Brahmottar* lands were to hold their lands at the half rates so assessed. The result was that the holders of these lands have ever since continued to hold at half rates. Their right to continue to hold at half rates was subsequently recognised and their holdings were declared by the Government of India in 1879 to be permanent, heritable and transferable. These estates paying half the ordinary revenue rates are known as *nisf-khiraj* estates. "The *nisf-khirajdar* of the present day is ordinarily a person whose lands were claimed by his ancestors revenue-free, on the ground that they were granted by the Assam Rajas for religious or charitable purpose" The owners of *nisf-khiraj* estates have the rights of a land-holder and these estates are re-settled from time to time with other *khiraj* estates of the district in which they are situated.

Bhogdhani and Paikan Lands :

Debottar lands were subdivided into *bhogdhani* and *paikan* lands and these lands were respectively held by the *raiyats* on condition of payment of *Bhog* and rendering service to the temple. *Bhog* means articles of food required by custom to be offered to a deity. It has been customary to offer food to the presiding deity of the temple; and for supply of rice, fish and other necessary articles for the daily *bhog* of the deity the Ahom kings made grants of lands free

Write short notes on :
 1. *Debottar*,
 2. *Dharmottar*, &
 3. *Dharmottar* lands of Assam.
 (G.U. '78, '76)

Write Short notes on :
Bhogdhani and *Paikan* lands.
 (G.U. '79, '81)

of rents. Such grants were known as *bhogdhani* lands. Some lands were also granted to persons serving in the temples. Lands so given were known as *paikan* lands. Raiyats holding *bhogdhani* lands are required to supply *bhog* to the temple and those holding *paikan* lands are required to render service to the temple.

(The lands belonging to the temples and other religious and charitable institutions of public nature have been acquired by the Government under The Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959 (Assam Act IX of 1961). Such institution is, however, entitled to retain possession of, (1) free of revenue, the lands actually occupied by it by constructing buildings and raising orchards and flower gardens and also lands reserved for resident devotees for residential purposes ; (2) tea gardens lands, but liable for assessment to full revenue rate. The acquired lands are now open for settlement with the rights of a land-holder or settlement-holder other than land-holder as provided for in the said Act).

(i) Estates held in fee-simple with estates under the Special Waste Land Rules :

These estates come within a new class of revenue-free estates created mainly for purpose of special cultivation under the various rules of settlement. After the discovery of tea in Assam the Government, in order to encourage the growth and expansion of tea industry in Assam, made grants of large tracts of waste land eminently suitable for cultivation of tea on specially favourable terms under the various sets of rules issued from time to time. These Rules were :

(a) 45 Year Lease Rules of 1838 (also known as Waste Land Grant Rules 1838) :

Under these rules one-fourth of the grant was to be held in perpetuity revenue-free. On the remaining three-fourths no revenue was to be assessed for the first five years if the lands were under grass, ten years if under reeds and high grass, and twenty years if under forest. On expiry of this term the revenue was to be assessed at $1/9$ -annas per acre for the next three years, after which the rate was to be for the next 22 years at Rs. $1/2$ -annas per acre. After expiry of this period the three-fourths of the grant were liable to assessment at the rate applicable to rice lands in the district where the grant is situated.

(b) 99 Year Lease Rules of 1854 (commonly called the Old Assam Rules) :

Under these rules one-fourth of the grant was exempted from assessment in perpetuity. The remaining three-fourths of the grant were to be held revenue-free for 15

years to be assessed thereafter at -/3/-annas per acre for 10 years, and at -/6/-annas per acre for the next 74 years. After the expiry of 99 years the grant was to be subject to resurvey and re-settlement at such moderate assessment as might seem proper to the Government. These rules continued to be in force till 1861, when they were superseded by the Fee-Simple Grant Rules.

(c) Fee-Simple Grant Rules of 1862 and Revised Fee-Simple Grant Rules of 1874 :

Under the Fee-Simple Grant Rules 1862 large compact areas were disposed of by auction at an upset price ranging from Rs 2/8/-annas to Rs 5/-per acre. The purchase money was to be paid either at once or by instalments in which case 10 percent of the purchase money was to be paid on the date of the sale and the balance amount bearing interest at 10 percent per annum was to be paid by instalments within 10 years. The purchaser was given a deed signed by the Collector, conveying to him the lot in full hereditary and transferable proprietary right, free for ever from all demand on account of land-revenue, but subject to the payment of all general taxes and local rates imposed by law. The Fee-Simple Rules also allowed holders of the lease-hold grants under the prior rules to redeem their revenue payments at twenty years' purchase of the revenue at the time payable, and this provision was largely taken advantage of.

Under the Revised Fee-simple Rules, 1874 the upset price of the land sold was modified and raised to Rs.8/- per acre. These rules continued till April 1876 when the Government of India directed the discontinuance of sale of waste lands in fee-simple throughout Assam. The owner of these revenue-free estates were classed as proprietors and they acquired permanent, heritable and transferable rights in their estates.

(These fee-simple estates and the revenue-free lands under the Waste Land Grant Rules are no longer revenue-free and these have since been made liable to assessment to, and payment of revenue under the Assam Assessment of Revenue Free Waste Land Grants Act, 1948). *

(ii) Permanently-settled estates :

"Permanently-settled estates" have been defined as those estates in Goalpara district and Karimganj subdivision of Cacher district which were settled under the Decennial Settlement Regulation, 1789 or permanently settled afterwards under any law for the time being in force.

Define "Permanently-settled estates":
(G.U. '62, '66)

"Permanent settlement" was introduced by the Bengal Regulation I of 1793 (known as The Bengal Permanent Settlement Regulation, 1793). Prior to it the Decennial Settlement Regulation was passed in 1789 and accordingly settlements were made under it for a period of ten years. The decennial settlement was made with the actual proprietors of the soil, whether zamindars, talukdars or choudhuries. The Decennial Settlement contained the promise that it would be made permanent, and by proclamation dated 22nd March 1793 the decennial settlement was made permanent and the Bengal Regulation I of 1793 was passed on May 1, 1793. The Regulation I, 1793 declared that on the expiry of the decennial settlement no alteration will be made in the assessment and that the amount is fixed for ever. In Assam 'permanent settlement' was to be found in Goalpara district and in Karimganj subdivision of Cachar district (Karimganj subdivision was a part of Sylhet district before partition of India). The areas within Goalpara district and Karimganj subdivision were acquired by the East India Company from the Mughals when it obtained possession of the *Dewanis* in Bengal, Bihar and Orissa by an agreement of August 1765 in return for an annual payment of rupees twenty six Lacs to the Emperor Shah Alam. The Mughals had annexed these areas within Goalpara district but the administration was left with the border chieftains who paid nominal tributes only to the Mughal emperors. After the *Dewanis* were acquired by the British, this tribute was accepted as land-revenue and the holders of these estates were recognised as zamindars of the estates. In Goalpara no settlement in detail was made at the decennial settlement and the estates of the zamindars were treated, for all practical purposes, as permanently-settled. The Karimganj subdivision came under the operation of the decennial settlement after survey, and the estates were settled permanently under the Permanent Settlement Regulation, 1793. The decennial settlements in this subdivision were made with the persons who under the Mughal administration were liable for the revenues of the estates to the choudhuries.

The main rights of the owners under the permanent-settlement may be enumerated as follows :

(1) The holders of the lands were declared to be the proprietors of the lands subject to the payment of fixed amount of revenue to the Government.

(2) The estates were permanent, heritable, and transferable by sale, gift, mortgage, lease, etc.

(3) The owners of the estates had the rights in the sub-soil and as such they could exploit the mines, minerals etc. and develop fisheries within their estates,

(4) The holders were entitled to receive rents from the "raiyats". (Regulation I, 1793 reserved the right in favour of the Government to provide by legislations necessary protections for the raiyats. Their rights were accordingly protected by the Goalpara Tenancy Act, 1929 and the Sylhet Tenancy Act, 1936.)

In Goalpara district the owner of a permanently-settled estate was called zamindar and was a mere rent receiver, having leased out all the lands of his estate either in perpetuity or for a term of years to tenants who may or may not be the actual cultivators. In Karimganj subdivision the large holders of permanently-settled estates who similarly had sub-let their lands were generally called zamindars and talukdars and the smaller holders, who for the most part cultivated their own holdings, were called '*mirasdars*' a term implying that the holdings were regarded by the people as permanent and heritable.

(The Zamindari system in Assam has since been abolished by the Assam State Acquisition of Zamindaris, Act, 1951 (Assam Act XVIII of 1951) and under this Act the rights and interests of the proprietors and tenure-holders in the permanently-settled estates have been acquired by the Government.)

(III) Temporarily-Settled Estates :

In the Regulation all estates for which revenue is payable and are not included within the permanent-settlements are called temporarily-settled estates. These estates are held direct from the Government for a term of years under periodic leases or on an annual basis under annual leases. The temporarily-settled estates may be of various kinds and these may be classified as follows :

(a) Revenue-paying estates held under the Waste Land Rules :

Under the Waste Land Grant Rules 1838 and 1854 the three-fourths of the grant were to be held at favourable rates for the period of the lease, after expiry of which these were liable to be assessed at the rates applicable to other lands in the neighbourhood. In 1876 after discontinuance of the Fee-Simple Rules a new set of rules known as New Lease Rules, 1876 were issued. Under these Rules the

Write notes on :
Temporarily-settled
estates
(G.U. '69,'79)

revenue was assessed at concessional rates for 30 years after which the assessment was to be made at the same rate as other lands in the neighbourhood. The holders of leases under these rules were granted a permanent, heritable and transferable right of use and occupancy in their lands. After the Regulation was passed Settlement Rules were framed under sections 12 and 29 of the Regulation which are in force now.

(b) The *Ilam* and modified *Ilam* estates :

These were the lands found outside the areas of the settled estates of the decennial settlements (i.e. permanent-settlements) of Karimganj subdivision. A list of such lands were prepared and advertisements or "Ilams" were issued inviting claims or objections to it. Hence, all such lands came to be known as 'Ilam' lands. These lands were brought under regular settlement in 1836 and the settlements were made for ten years. The re-settlement and re-assessment of *Ilam* lands were made under the *Ilam* Settlement Rules of 1876 and modified *Ilam* Rules of 1878. The "Ilam rules" made no provision for the settlement of waste lands. Till 1876, waste lands were settled under the *Jangalburi* Rules of 1864 which were discontinued and until the Settlement Rules, 1894, waste lands continued to be settled under the "Ilam Rules".

(c) The *Nisf-khiraj* or half revenue-paying estates :

These estates were claimed by the holders revenue-free on the basis of the grants made by the Assam Rajas. The Government of India, however, while confirming the grants assessed the revenue at half the ordinary rates. The holders of these estates were declared to be landholders.

(d) Acknowledged Estates :

In Goalpara district the areas within Bijni and Sidli Duars originally formed part of the Eastern Duars. The areas within the Eastern Duars were ceded to the British in 1866 by the Bhutan Government in the Bhutan war. The Rajas of Bijni and Sidli Duars claimed to hold these lands as they had been holding these under the Bhutan kings. In 1867 the Government of India recognised their claims to hold these lands and decided to grant periodic settlement with proper protective conditions for the raiyats. Accordingly a ten year periodic settlement was granted in 1885 to the Rajas of Bijni and Sidli after determining the respective areas. These estates are known as 'Acknowledged Estates'. These estates have now been acquired by the

Government under the Assam State Acquisition of Zamin-daris Act, 1951.

(e) The **Khiraj** or full revenue-paying estates under periodic leases :

The long term settlement was first introduced through the decennial settlement rules of 1883. Under these rules settlements were made for a period of ten years and periodic leases were issued conferring on the holder a permanent, heritable and transferable right in the lands covered by it. After the passing of the Regulation Settlement Rules have been framed under it and under these Rules settlements and re-settlements were made and at present the settlements are made for a period of thirty years and periodic leases are accordingly issued.

(iv) **Khiraj** or full revenue-paying estates held under annual lease :

These are full revenue-paying estates and are held direct from Government under annual leases. An annual lease means a lease granted for one year only and confers no right in the soil beyond a right of user for the year for which it is given, and non-renewal notice is required if re-settlement is to be refused on the expiry of the term.

(v) **Special revenue-paying estates** :

There are also few other estates which are known under special names. Some of these were settled many years ago and are still held at the special rates. These are :

(a) **Chamuas** : A *Chamua* is a large holding under Government, the land being assessed at ordinary full rates, and the *Chamuadar* having the special privilege of paying his revenue direct into the Government treasury instead of through the Maujadar. Two such holdings are there in Kamrup.

(b) **khats** : *Khats* are grants of land made by the Ahom kings to the dignitaries. In Nowgong there is a large area of land treated as one estate known as the *Auniati khat*. It is assessed on cultivation only, measured annually at ordinary *Khiraj* rates. The *Khatdar* holds the *Patta* and pays the revenue direct into the treasury. Another *khat* known as *Bahikhoe Phukan's Khat* in the same district is assessed for the settlement period on the cultivated portion only; exemption of the waste is an act of grace. The revenue is payable direct into the treasury. The *Fatasil* and *Jhalukbari Khat* in Kamrup district

Write notes on :
'*khiraj lands*'
(G.U. '72)

What are the special revenue paying estates ?
(G U '79)

are portions of old grants which were resumed for non-fulfilment of the clearance condition. They are assessed at the ordinary *Khirej* rates on cultivation only. Periodic leases are now issued to the *Khatdars* but the revenue is assessed after every five years. In Lakhimpur district there is only one *Khat* known as Lakhimpur *Khirej Khat*. It is held by the Gossain of the Gharmara Satra who pays the revenue direct. The cultivators pay revenue at the assessed rates and the *Khatdar* receives 10 per cent as his commission.

(c) **Six-Pie Lakhraj** Tenures : There are certain lands in the district of Darrang belonging to the Auniati Gossain and the Dakhinpat Gossain which are practically revenue free estates held originally from the Assam Rajas ; but in former days the Dafias used to exact from the Gossains a sort of blackmail at the rate of Six Pies per Bigha on all cultivated lands. When the British Government took possession of the area the Dafias were given pension and the Gossains paid the blackmail as revenue to Government.

(d) **The Ten-twenties of Sibsagar** : In 1884 when the liberation of their *bahatas* or slaves reduced many old families in Sibsagar district to a state of comparative indigence, a special concession was granted in case of certain estates : half the land revenue was remitted when revenue exceeded Rs 20 ; where the assessment exceeded Rs 10 but did not exceed Rs 20 half the excess over Rs 10 was remitted. The concession was for the life-time of the land-holders only ; but four such estates belonging to religious institutions the remission is perpetual.

2. Land-Revenue

Revenue assessed on the land, or any tax imposed in lieu of revenue assessable on the land is called land-revenue. The hoe-tax or house-tax is an annual tax which may be levied on a family or house of persons or on each male person completing the age of eighteen years, and taking part in the cultivation of the land at any time during the year of assessment. The hoe-tax or house tax imposed under section 47 of the Regulation, therefore, comes within the definition of "land-revenue".

3. Proprietor :

The owners of two classes of estates are called

proprietors ; they are :

(1) the owners of permanently-settled estates, and
 (2) the owners of the revenue-free estates, namely, the *Jakhirej* and fee-simple estates, which are separately entered in the general register of revenue-free estates maintained by the Deputy Commissioner.

4. Settlement-holders including land-holders :

The owners of temporarily-settled revenue-paying estates are known as settlement-holders. They acquire the lands under leases granted by or on behalf of the Government and enter into an engagement with the Government to pay land-revenue of the lands so settled with them. The term "settlement-holder" also includes a "land-holder". The term "land-holder" is used to designate the owner of temporarily-settled estates who has obtained settlement under a lease the term of which is not less than ten years, or who had held the land continuously for a period of ten years before the Regulation was enforced.

Settlements are made under leases which may be either periodic or annual. A periodic lease, except in the case of town land, means a lease granted for a period longer than one year, and in the case of town land, a lease for a period longer than three years. Periodic leases are ordinarily granted for a term of not less than ten years and at present settlements and resettlements under periodic leases are made for a period of thirty years. It conveys to the grantee the rights of a land-holder who is a settlement-holder having obtained settlement of the estate for a period of not less than ten years. The land-holder has a permanent, heritable and transferable right of use and occupancy in his lands. He has a right of re-settlement on the expiry of the term of his lease or patta. The land-holder can relinquish his estate at any time during the currency of the settlement by giving notice at the time and in the manner prescribed by the Regulation. In that case the lease will stand cancelled and discontinued and the land-holder loses his rights in the land and is released from all future obligations to pay the revenue of the estate. A periodic patta can be annulled for arrear of revenue of the estate if the arrear is not realisable by attachment and sale of the movable properties of the defaulting land-holder. In that case the Deputy Commissioner may, by publishing a proclamation and obtaining sanction of the Commissioner, annul the existing settlement and relinquish the claim of the Government to the arrear revenue. The lease

Write short notes
 on :
 Proprietor
 (G.U. '77)

Write notes on :
 Settlement-holder
 and Land-holder
 (GU '76, '77)

Distinguish between annual and periodic leases issued under the Assam Land and Revenue Regulation. Can these leases be cancelled or annulled or discontinued ?
 (GU '64, '72)
 If so describe the mode of doing so
 (GU '64)

is also liable to be cancelled for infringement of any of its conditions.

Write short note on :
Periodic lease and Annual lease (G.U '81)

Settlements for a period of less than ten years in rural areas are generally made under annual leases. In the case of annual lease or patta settlement is granted for one year only and it confers no right in the soil beyond a right of user for the year for which it is granted. It confers no right of transfer, or of inheritance beyond the year of issue, or of sub-letting. The land can be taken over by the Government when required for public purposes in which case no compensation for the loss of the land is payable, but the settlement-holder is entitled to the compensation for the standing crops or trees grown by him and also for the houses. On expiry of the term of settlement the settlement-holder is ordinarily given re-settlement, and notice of non-renewal is required to be given if re-settlement is to be refused. The settlement can be cancelled by issue of a non-renewal notice and without such notice of non-renewal the lease or patta will be deemed to have been renewed for the next year also. The owners of these estates under annual leases are known as "settlement-holders other than land-holders". An annual patta can be annulled if there is default in revenue and the arrear is not realisable by attachment and sale of the movable properties of the defaulting settlement-holder. In such case the Deputy Commissioner may, by publishing a proclamation, annul the settlement and relinquish the claims to the arrear. An annual patta is also liable to be cancelled if the settlement-holder transfers or sublets the land or commits breach of the conditions of the lease. On the death of the settlement-holder the lease stands cancelled on the expiry of the year of issue of the lease.

An annual patta can be converted into periodic and on such conversion the settlement-holder acquires the status of a land-holder.

5. Town lands : In the settlement of town lands a slightly different procedure is adopted and Settlement Rules for the purpose have been framed. Town land means any land within an area declared or deemed to be a municipality or notified area under the Assam Municipal Act, 1956 and any other land which the State Government may declare under the Assam Land and Revenue Regulation or in accordance with

the provision of section 3 of the Assam Land Revenue Re-assessment Act, 1936, to be town land. Town lands are settled either on short leases or on periodic leases. A short lease of land is granted where it is not considered desirable to lease except for temporary purposes. A short lease means a lease which is granted for a period not exceeding three years, and it confers upon the lessee no right in the soil beyond a right of user for the period. It confers no right of inheritance beyond the period of the lease or of transfer. A periodic lease for town lands means a lease which is granted for more than three years, and which, if granted for not less than ten years, confers a permanent, heritable, and transferable right of use and occupancy in the land, subject to the payment of the land-revenue, and local taxes, cesses or rates etc., to the reservation in favour of the Government of all quarries, mines, minerals, mineral oils and all buried treasure, and to the special conditions of any engagement into which the land-holder may have entered with the Government. The lease is renewable on the expiry of the term. The rights are precisely similar to those enjoyed by the land-holders of rural areas.

6. "Recorded proprietor", "recorded land-holder", "recorded sharer", and recorded "possession" :

Under the Regulation (Chapter IV) the Deputy Commissioners are required to maintain general registers of revenue-free and revenue-paying estates (s. 48). The names of the persons owning the estates as proprietors or land-holders or sharers are entered in the respective registers. The registers are to be maintained upto date. Any change in the ownership and possession are to be recorded in the registers. Further, every proprietor or land-holder succeeding to an estate and obtaining possession or a mortgagee in possession is required to apply to the Deputy Commissioner for registration of his name (s. 50). The proprietor, land-holder or sharer whose name is so entered in the relevant general registers is called "recorded proprietor", "recorded land-holder", and "recorded sharer", as the case may be, and possession so recorded is called "recorded possession".

Define : Recorded
proprietor
(GU '66, '74)

CHAPTER II

RIGHTS OVER LAND

Land exempted from the operation of this Chapter.

Power to define boundaries of exempted land.

Rights which may be acquired over land.

Rights of proprietors.

4. This Chapter shall apply to all land except the following :—

- (a) land included in any forest constituted a reserved forest under the law for the time being in force ;
- (b) any land which the State Government may, by notification, exempt from the operation of this Chapter.

Note :—“The Lumding khraj Block” has been exempted from the operation of Chapter II.

5. (1) When the boundaries of any land exempted under section 4 from the operation of this Chapter need definition for the purposes of that section, and no other mode of defining them is provided by law, the State Government shall cause them to be defined by the Deputy Commissioner.

(2) If, before the boundaries are defined, any question arises as to whether any land is included within them, it shall be decided by the Deputy Commissioner.

(3) The order by which a Deputy Commissioner defines any boundaries, or decides question under this section shall, subject to the provisions of section 151 of this Regulation, be final.

6. No right of any description shall be deemed to have been, or shall be, acquired by any person over any land to which this Chapter applies, except the following :—

- (a) rights of proprietors, land-holders and settlement-holders other than land-holders, as defined in this Regulation, and other rights acquired in manner provided by this Regulation ;
- (b) rights legally derived from any right mentioned in clause (a) ;
- (c) rights acquired under sections 26 and 27 of the Indian Limitation Act, 1877 ; (now sections 25 and 26 of the Indian Limitation Act, 1963)
- (d) rights acquired by any person as tenant under the Rent Law for the time being in force ;

Provided that nothing in this section shall be held to derogate from the terms of any lease granted by or on behalf of the Government.

7. Proprietors shall, subject to the provisions of this Regulation, have the same rights and enjoy the same privileges

in respect of lands included in their estates as they have at the commencement of this Regulation.

Note :—Section 3 of the Assam Assessment of Revenue Free Waste Land Grants Act, 1948 has made a Revenue Free Waste Land Grant liable to assessment to, and the payment of revenue.

8. (1) (a) Any person who has, before the commencement of this Regulation, held immediately under the Government for ten years continuously any land not included either in a permanently-settled estate or in a revenue-free estate, and who has during that period paid to the Government the revenue due thereon, or held the same under an express exemption from revenue, and

(b) except as provided by section 15, any person who has, whether before or after the commencement of this Regulation, acquired any such land under a lease granted by or on behalf of the Government, the term of which is not less than ten years,

shall be deemed to have acquired the status of a landholder in respect of the land.

(2) When land held by one person has come immediately by transfer or succession to be held by another, the holding shall, for the purposes of sub-section (1), clause (a) be deemed to have been continuous, and the latter person may, in reckoning the length of his holding, add the holding of the former to his own.

(3) When any revenue has been paid in respect of land by any person holding the land under another, that revenue shall, for the purposes of the said clause, be deemed to have been paid by the latter person.

9. A land-holder shall have a permanent, heritable and transferable right of use and occupancy in his land, subject to—

- (a) the payment of all revenue, taxes, cesses and rates from time to time legally assessed or imposed in respect of the land ;
- (b) the reservation in favour of the Government of all quarries and of all mines, minerals and mineral oils, and of all buried treasure, with full liberty to search for and work the same, paying to the land-holder only compensation for the surface damage as estimated by the Deputy Commissioner; and
- (c) the special conditions of any engagement into which the land-holder may have entered with the Government.

Status of land-holder how acquired,

Rights of land-holders.

Note :—For restrictions on the right of transfer see Executive Instruction 6 in Assam Land Revenue Manual.

Forfeiture of land-holder's rights on relinquishment

10. Any land-holder who, after the commencement of this Regulation, voluntarily relinquishes any land and ceases to pay the revenue assessed thereon shall at once forfeit his status of land-holder in respect of that land.

Rights of settlement-holders.

11. A settlement-holder, who is not a land-holder, shall have no rights in the land held by him beyond such as are expressed in his settlement lease.

Power to make rules for the disposal of Government lands and ejection therefrom of unauthorized occupiers.

12. In the case of any land over which no person has the rights of a proprietor, land-holder or settlement-holder under this Regulation, the State Government may make rules to provide for—

- (1) the disposal by way of grant, lease or otherwise of such land,
- (2) the ejection of any person who has entered into unauthorized occupation of such land, and
- (3) the disposal of any crop raised, or any building or other construction erected without authority on such land.

Note :—For the rules framed under this section see Part II, Chapter I, SECTIONS I, II, and IV of the Assam Land Revenue Manual.

Power to make rules for allotment of grazing grounds.

13. The State Government may make rules for the allotment from the land referred to in section 12 of grazing grounds to the inhabitants of any village in the neighbourhood whom they consider to stand in need of such allotment, and for regulating and controlling the enjoyment of those grazing grounds by persons permitted to resort thereto.

Note :—For the rules framed under this section, see Part II, Chapter II and part VII, Appendices II and III, of Assam Land Revenue Manual.

Power to make rules for allotment of lands for tribes practising jhum or migratory cultivation.

14. The State Government may make rules for the allotment from the land referred to in section 12, for the use of tribes or families practising *jhum* or migratory cultivation, or areas suitable for such cultivation, of sufficient extent, and situated in localities reasonably convenient, for the purposes of the persons to whom they are allotted, and for regulating and controlling the enjoyment of lands so allotted by persons permitted to resort to the same.

Note :—No rules have hitherto been framed by the State Government under this section.

Bar to acquisition of rights over

15. No person shall acquire, by length of possession or otherwise, any right over lands disposed of or allotted under

section 12, section 13 or section 14 beyond that which is given by the rules made under the section.

16. The Deputy Commissioner, with the previous sanction of the State Government, may, by proclamation published in the prescribed manner, declare any collection of water, running or still, to be a fishery ; and no right in any fishery so declared shall be deemed to have been acquired by the public or any person, either before or after the commencement of this Regulation, except as provided in the rules made under section 155 :

Provided that nothing in this section shall affect any express grant of a right to fish made by or on behalf of the Government or on any fishery rights acquired by a proprietor before the commencement of this Regulation, or the acquisition by a proprietor of such rights in any fishery forming after the commencement of this Regulation in his estate.

land disposed of under sections 12, 13 or 14.

Rights in fishery.

NOTES :

CHAPTER—II

Rights Over Land (Ss. 4—16).

Chapter II of the Regulation enumerates the different kinds of rights which may be acquired over lands, and defines the nature and extent of the rights acquired by the different classes of holders of land. This chapter further provides for the issue of settlement rules by the State Government and also rules for allotment of grazing ground and for allotment of lands for the tribes practising *hum* or migratory cultivation. The provisions of this chapter, however, do not apply to any land included in any forest constituted as reserved forest and lands which are excepted from the operation of this chapter by notification by the State Government.

1. Rights which may be acquired (S-6) :

Section 6 enumerates four different kinds of rights that may be acquired over land under the Regulation. Persons holding lands and having different kinds of rights and interests in lands can be grouped into three classes. They are :

- (1) Proprietors who are owners of :
 - (a) the revenue-free estates, namely, the *lakhraj* and fee-simple estates, and
 - (b) permanently-settled estates ;
- (2) Land-holder who holds land direct from Government under a periodic lease the term of which is not less than ten years :
- (3) Settlement-holder other than land-holder who holds land direct from Government under a lease the term of which is less than ten years, usually an annual lease in rural areas and a short lease in town areas,

The rights of the proprietors, land-holders and settlement-holders other than land-holders are defined in the Regulation (Ss. 7, 9 and 11). In addition to these, other rights like the fishery rights in proclaimed fisheries, the right to collect rubber, lac and other forest-produce, and the right to work mines, stones, and lime quarries, salt-wells and oil-wells may also be acquired under licences granted under the rules. Such licences are granted under the rules framed under section 155 (e) and (f) of the Regulation.

These are the main rights in land. There may also be other rights acquired under the special terms of the lease

What are the different rights that may be acquired on land under the Regulation.

(G.U. '81)

granted by or on behalf of the Government. The rights legally derived from the above rights are also recognised as rights acquired in land under the Regulation. The rights acquired by transfer or succession, or the rights acquired under leases from the proprietors or land-holders are examples of such legally derived rights. The Regulation also recognises the right of easement acquired over lands. This is a prescriptive right acquired under sections 25 and 26 of the Indian Limitation Act, 1963. Easement is a right which the owner of certain land enjoys over the land of another in a particular limited manner for the beneficial enjoyment of his land. The right of easement such as the access and use of light or air to or for any building, or right of way or to water-course, or use of any other easement, is acquired by prescription over the property of another by enjoying the right of easement peaceably, openly and as of right, without interruption for a period of twenty years, when the right becomes absolute and indefeasible. Where the property over which such right is claimed belongs to the Government the period is thirty years.

Further, the different Tenancy Acts in Assam, viz., (i) the Goalpara Tenancy Act, 1929, (ii) the Sylhet Tenancy Act, 1936 and (iii) the Assam (Temporarily Settled Areas) Tenancy Act, 1971 have declared the rights of the various categories of tenants. These rights acquired by a person as tenant under the Rent Laws are recognised by the Regulation as rights in the lands in his occupation.

2. Rights of proprietors (§.7) :

The Regulation does not separately define the rights of the proprietors but simply recognises the rights and privileges which they had enjoyed at the time of the commencement of the Regulation. This implies that all the proprietors may not enjoy the same kind of rights. By the definition the "proprietors" are divided into two classes : (i) proprietors of revenue-free estates, i.e., *lakhraj* and fee-simple estates, and (ii) proprietors of permanently-settled estates. The estate of the *lakhrajdar* or fee-simple owner is the highest estate in land. It has all the advantages of a permanently-settled estate with the additional one that it pays no revenue to the Government. The *lakhrajdars* derived their rights under the grants made by the previous rulers of Assam and which were subsequently confirmed by the British Government on

Chapter II—Rights Over Land

the same terms. The rights of a *lakhirajdar* are :

- (1) he is entitled to hold his estate free from revenue,
- (2) the estate is heritable and transferable, provided the *lakhirajdar* is the legal owner, and not only a trustee thereof, e. g., a temple *sebait* or *dalai*,
- (3) he can create encumbrances which can not be avoided even though the estate be brought to sale on account of any demand realisable by law as an arrear of land-revenue,
- (4) he can grant leases for any portion of his estate, but his power to enhance the rent of his tenants is limited by law,
- (5) he has the rights of mining and fishing and also other incorporeal rights included in his estate.

The fee-simple estates were also revenue-free estates and were created under the Fee-simple Rules conveying to the holder the estate in full hereditary and transferable proprietary rights, free for ever from all demand on account of land-revenue but subject to all general taxes and local rates imposed by law. He has the rights of mining and fishing although the Government can levy royalty on the product of any mines or quarries which may be discovered and worked within such land.

The property of the owner of a permanently-settled estate is inferior to that of the *lakhirajdar*, inasmuch as he is liable to Government for the payment of a fixed amount of revenue, and the estate may be sold for arrear revenue free from all encumbrances subject to certain exceptions (S. 71). The rights of the owner of permanently-settled estate are :

- (i) he is liable to Government for the payment of a fixed amount of revenue and also to all cesses, taxes and local rates imposed by law,
- (ii) the estate is permanent, heritable and transferable and the owner can transfer it by sale, mortgage, gift or bequest etc.,
- (iii) he can grant leases for the whole or any portion of his estate for a term of years or in perpetuity, but his power to enhance the rents of his tenants is limited by law (i.e., by the Goalpara Tenancy Act, 1929 and the Sylhet Tenancy Act, 1938),
- (iv) he has the right of mining and fishing and also other incorporeal rights included in his estate.

(The *Lakhroj* estate is now confined to a small area actually occupied by the *lakhirajdar* by constructing buildings and raising orchards and

flower gardens and lands reserved for resident devotees for residential purposes as provided in S. 5 of the Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959 (Assam Act No. IX of 1961). The fee-simple estate is no longer revenue-free and has since been made liable to assessment to, and the payment of revenue under the Assam Assessment of Revenue Free Waste Land Grants Act, 1948, but the terms and conditions of the grant and the rights and privileges of the grantee remain unaffected. The permanently-settled estates have since been acquired by the Government under the State Acquisition of Zamindaris Act, 1951.)

18000

3. Status of Land-Holder — How Acquired (S. 8) :
The status of a land-holder can be acquired only in respect of temporarily-settled estates, i. e., estates in respect of which revenue is payable, and are not included within the permanently-settled estates. There are two ways in which the status of a land-holder can be acquired :

(1) by holding land under a lease granted by or on behalf of the Government for a term of not less than ten years ; and

(2) by holding land under the Government for a continuous period of ten years before the commencement of the Regulation and paying the revenue due thereon, or holding it under an express exemption from revenue. In counting this period of ten years, the person claiming the status of land-holder could include or add to his period of holding the period for which his predecessors from whom he obtained the land by transfer or succession had held the land.

Thus after commencement of the Regulation a periodic lease from Government for a term of not less than ten years is an essential requisite for acquiring the status of a land-holder, while in the case of a person holding land prior to the Regulation he could acquire the status of a land-holder either under a lease the term of which is not less than ten years, or alternatively if he had completed ten years of continuous possession before the commencement of the Regulation.

4. Rights of Land-holders (S. 9) :

A land-holder has a permanent, heritable and transferable right to use and occupancy in his estate. Thus :

(1) his right to the land is permanent in the sense that on the expiry of the term of the lease his rights and interests in the land are not terminated, but he is entitled to re-settlement of the land from the Government. The revenue can, however, be enhanced on re-settlement ;

(2) the estate is heritable which means that on the

How does a person acquire the status of a land holder under the Regulation ?

(G. U. '67 '68. 69 '70 D.U '67)

Define land-holder as recognised by the Regulation. How the status of the land-holder is acquired and what are his rights ?

(D. U. '67)

What kind of rights does a land-holder enjoy ?

(G. U. '67)

Who acquires the right to use and occupancy and what are his rights ?

(G. U. '81)

death of the land-holder his heirs and successors will inherit the property during the subsistence of the lease and are entitled to re-settlement of the land on the expiry of the lease just as the original land-holder would have been entitled to:

(3) the land-holder has a transferable right in his estate and he can transfer his estate by sale, gift, mortgage, bequest etc. The transferee in that case will have the same rights as the land-holder transferor,

The land-holder is liable to pay revenue assessed on his land and also all taxes, cesses and rates that may be assessed from time to time. The land-holder has, however, no rights in the sub-soil, and is not entitled to the quarries, mines, minerals and mineral oils and buried treasure. These are all reserved in favour of the Government who is at liberty to search for and work the same. The land-holder will be entitled to the compensation for the surface damage only as estimated by the Deputy Commissioner. The land-holder's rights are, however, subject to any special conditions that may be mentioned in the lease. The lease is liable to be cancelled for infringement of any of the conditions of the lease. The land-holder can relinquish his estate or any entire field (dag) within his estate during the currency of the lease by giving due notice in the manner prescribed by the Rules and ceasing to pay the revenue. In that case he loses his status of land-holder in respect of that land and is released from all future obligation to pay the revenue of the land so relinquished.

(S. 34 (d) provides for relinquishment of an estate after giving notice at the time and in the manner prescribed. R. 24 prescribes the procedure for such resignation and under it, the settlement-holder wishing to relinquish the estate or any entire field (dag) within his estate is required to tender a written petition to the Deputy Commissioner after paying all the revenue due in respect of the estate or the field proposed to be relinquished. The latest date for filing such petition is the 15th February.)

B. Rights of Settlement-Holder other than Land-holder (S II) :

A settlement-holder, as defined in the Regulation, is a person who holds a temporarily-settled estate direct from Government. A settlement-holder who is not a land-holder holds his estate under a lease the term of which is less than ten years. Settlement for a term of less than ten years is usually made under an annual lease, except in the case of town lands where a short lease for a period not exceeding three years may be granted. Such settlement-

holder acquires no right beyond what are expressed in his settlement lease. An annual lease means a lease granted for a term of one year only and confers no right in the soil beyond a right of user for the year for which it is given. It confers no right of transfer or of sub-letting, and on the death of the settlement-holder his heirs can inherit the estate only for the remaining period of the lease. An annual settlement-holder has, therefore, no heritable or transferable property in his land, such a property being expressly denied to him under the terms of his lease. If the land is taken up for public purposes he is entitled to the compensation for the growing crops, fruit trees and the buildings actually standing on the land, but he is not entitled to compensation for the land itself. On the expiry of the period of the lease, the settlement-holder is ordinarily given re-settlement and notice of non-renewal is required if re-settlement is not desired. If no such non-renewal notice is given the lease will be deemed to have been renewed for the next year also,

6. Rules for Settlement of Lands and Ejectment of unauthorised occupiers. (S 12) :

S. 12 empowers the State Government to frame Settlement Rules and also Rules for ejectment of persons in unauthorised occupation of lands at the disposal of Government, and accordingly Settlement Rules have been framed under which settlements including re-settlements are made. Rule 18 of the Settlement Rules provides for ejectment of any person from land over which no person has acquired the rights of a proprietor, land-holder or settlement-holder. If a person is found occupying land reserved for roads, or roadside lands or reserved for the grazing of village cattle or for other public purposes, or any land from which he has been excluded by general or special orders and when no bona fide claim of right is involved, the Deputy Commissioner may evict him for himself and sell, confiscate or destroy any crop raised or structure built on the land. In other cases of waste lands the Deputy Commissioner can eject such unauthorised occupants only after 15 days of the publication of a notice requiring such persons to vacate the land and remove the crops or any structure raised thereon. The Deputy Commissioner may, however, give time to harvest the crops grown on the land, in case the structures or the crops are not removed the same will be confiscated to the Government. The notice

Under what circumstances can a person be evicted under Rule 18 of the Settlement Rules made under the Regulation ? What is the procedure ?

(G.U. '68)

requiring to vacate the land is to be published by affixing a copy on the land concerned or in a prominent place in its vicinity and also in the notice board of the Deputy Commissioner or Sub-Divisional Officer, as the case may be, and also in the notice board of the Sub-Deputy Collector within whose jurisdiction the land is situated.

Any person intentionally disobeying an order to vacate the land is also liable to a penalty which may extend to two hundred rupees, and to a further penalty to the extent of fifty rupees for each day during which such breach continues. If after ejectment a person again encroaches the land, he will be liable to be prosecuted before a Magistrate and on conviction be liable to imprisonment which may extend to six months or fine upto one thousand rupees or both.

7. Allotment of Grazing Grounds (S 13) :

State briefly what provisions are made in the Regulation for allotment of land for (i) grazing ground and (ii) jhum cultivation,

(G.U. '70)

Lands at the disposal of the Government may be allotted for grazing grounds. S. 13 empowers the State Government to make rules for the purpose and accordingly rules (Rules 83—96) have been framed for allotment of grazing grounds. Under these rules whenever the Deputy Commissioner, after enquiry, finds it necessary that land at the disposal of the Government should be allotted to the inhabitants of any village or villages as a grazing ground, he shall cause the land to be demarcated and mapped. A notice of the proposal to allot it as grazing ground is then published. Objections against the proposed allotment, if received within one month of the publication of the notice, are inquired into and if alteration in the area or boundaries of the proposed grazing ground is necessary, a revised notice is published. Objections received within one month of the publication of the revised notice are then disposed of after necessary enquiry ; and thereafter the Deputy Commissioner reports his proceedings to the Commissioner who may confirm the proposal with the approval of the Government. After confirmation of the proposal a final notice is published declaring the land to be allotted as grazing ground. On such allotment it is entered in the register of grazing grounds and such land may then be used as a grazing ground free of charge by persons other than professional graziers, and no person can occupy any part of such grazing ground for purposes other than grazing. The Deputy Commissioner may, if he thinks it desirable to do so, prescribe conditions on which a grazing ground may be used. The allotment of grazing

ground can be cancelled if the Deputy Commissioner is of opinion that it is wholly or in part not required for the purposes for which it was allotted. In that case the Deputy Commissioner publishes a notice regarding the proposed cancellation of the allotment, and after hearing objections, if any, the proceedings with his recommendations are forwarded to Government for final orders. The final order is then passed by Government either accepting, rejecting or modifying the recommendation of the Deputy Commissioner.

8. Allotment of Land for Jhum Cultivation (S. 14) :

Lands at the disposal of Government may be allotted for purpose of *jhum* or migratory cultivation. Allotment of lands of sufficient extent and suitable for *jhum* cultivation may be made for the use of tribes or families practising such cultivation. S. 14 empowers the State Government to frame rules for such allotment and also for regulating and controlling the enjoyment of lands so allotted. Rules under this section, however, have not been framed as yet

9. Rights in Fishery (S. 16)

Section 16 provides for the creation of fisheries and the mode of acquiring the fishery rights. The Deputy Commissioner with the previous sanction of the State Government may, by proclamation, declare any collection of water running or still, to be a fishery. After a fishery is so created no person can have any right in it except under the rules. Rules have been framed by the State Government under Sections 155 and 156 of the Regulation for granting of licences to fish in such proclaimed fisheries. The rights of a proprietor in the fisheries within his estate, however, remain unaffected.

CHAPTER III

Settlement And Resumption

PART A.—GENERAL

17. Settlement operations may consist of one or more of the following :—

- (a) survey and demarcation ;
- (b) assessment of land revenue of land ;
- (c) record-of-rights.

18. (1) When any local area or class of estates is to be settled the State Government may issue a notification of settlement, and in the notification shall—

- (a) define the local area or class of estates to be settled, and
- (b) specify the settlement operations to be carried out.

(2) The State Government may amend or alter any such notification.

19. (1) Every local area or class of estates shall be held to be under settlement from the date of any notification published under section 18 and relating thereto, until the issue of another notification declaring settlement operations to be closed therein.

(2) Every local area or class of estates under settlement at the commencement of this Regulation shall be deemed to be under settlement within the meaning of this section without the issue of the notification prescribed by section 18.

20. The State Government may, by rule, direct that this Chapter or any one or more sections or portions of sections thereof shall not apply to any local area or to the settlement of any particular class of estates.

Note :—It has been declared by Settlement rule 96A—

(1) that the following portions of the following sections of the Regulation shall not apply to the settlement of any area or estate in the Assam Valley or in the district of Cachar excluding Karimganj Subdivision, viz.—

- (i) Sub-section 2 of section 33.
- (ii) Sub-section 3 of section 33 so far as it relates to delivery of a acceptance.

(iii) Proviso (b) to section 34, and

(2) that in addition, sections 18 and 19 shall not apply to any area or estate in the Assam Valley or in the district of Cachar excluding Karimganj Subdivision, which is not included in a village which has been traversed, surveyed, mapped and classed.

Settlement operations defined.

General notification of settlement

Period during which local area is held to be under settlement.

Power of State Government to exclude any local area, etc., from the operation of any portion of this Chapter.

PART B—SURVEY AND DEMARCTION OF LAND

21. Every proprietor and settlement-holder of any land and every person entitled to receive rent in respect of any land or occupying any land as a tenant, shall, on the written requisition of a Survey-officer, furnish, personally or otherwise, as the Survey-officer directs, such information or assistance as may be required by that officer for the purposes of the survey of the land.

Power to call for information and assistance.

22. (1) Every proprietor and land-holder of any land, and every person entitled to receive rent in respect of any land, shall, on the written requisition of a Survey-officer, erect and repair such boundary-marks on the land as the Survey-officer directs.

Power to require erection and maintenance of boundary marks.

(2) If any person on whom a requisition has been made under sub-section (1) fails to erect or repair any boundary-mark mentioned in the requisition, the Survey-officer may erect or repair it.

23. (1) Whenever in the course of survey it comes to knowledge of the Survey-officer that any boundary dispute exists, he shall notify the same to the Settlement-officer, who shall proceed as follows :—

Procedure in case of boundary dispute.

(a) if the dispute is between the proprietors of different estates, the Settlement-officer shall decide it on the basis of actual possession ; or if he is unable to satisfy himself as to which party is in possession, he may determine by summary inquiry who is the person best entitled to possession, and may put him in possession ; or he may refer the dispute to arbitration for decision on the merits, as provided in section 143 ;

(b) if the dispute is between the settlement-holders of different estates, the Settlement-officer shall, after due inquiry, determine the proper boundaries of those estates ;

(c) if the dispute is between the Government and any settlement-holder as to whether any land is comprised in the settlement, the Settlement-officer shall, after due inquiry, determine the dispute,

(2) The order by which a Settlement-officer determines any boundaries or any dispute under clause (b) or clause (c) of this section shall, subject to the provisions of section 151 of this Regulation, be final.

Chapter III—Settlement And Resumption

Note :—(1) As no appeal lies to a superior revenue authority and the jurisdiction of the Civil Court is barred in cases under section 23 clause (b) and (c), the Settlement Officer must be very careful in deciding boundary disputes. The report of a *mauzadar* or any other local official may be a useful addition to the evidence in the case, but independent evidence must also be taken if either of the parties does not agree to the report and offers to produce other evidence.

(2) When there is no special Settlement Officer, the powers of a Settlement Officer devolve under section 138 (2) upon the Deputy Commissioner or Subdivisional Officer.

24. Whenever the Settlement-officer has determined a dispute under section 23, and the order has become final or has been altered by a decree or order of any competent Court or authority, which has become final, and

whenever it comes to the notice of the Survey-officer that any boundary has been determined by a competent Court or authority,

the Survey-officer may cause such marks as he may think fit to be erected in order to secure the boundary permanently.

Note :—In the course of the original cadastral survey of the plains portions of Assam, conducted between the years 1883 and 1897 by a professional party of the Government of India, Survey Department, the boundaries of the permanently-settled and revenue free estates and also of waste land grants, as then existing, were surveyed and as far as possible, demarcated. In their letter No. 2709—23R., dated the 22nd July 1895, Government have declared that they will not in future recognise any boundary in these estates other than those laid down by the cadastral survey.

25. Any person wilfully destroying, removing or damaging any boundary-mark (not being a landmark fixed by the authority of a public servant within the meaning of section 434 of the Indian Penal Code) which has been lawfully erected shall be punished with fine which may extend to two hundred rupees for each mark so destroyed, removed or damaged, in addition to such sum as may be necessary to defray the expense of restoring the boundary-mark so destroyed, removed, or damaged.

Note :—(1) Action shall usually be taken in accordance with this section when any boundary-mark erected under sections 22 and 24 and Statutory Rule 100 of the Regulation is destroyed, removed or damaged. Action may be taken under the provisions of section 434 of the Indian Penal Code also, when the section applies and the offence is of a grave nature.

26. If a permanent boundary-mark lawfully erected on any land, or on the boundary thereof, injured, destroyed or removed, or requires repairs, the proprietor or settlement-holder of the land, and every person entitled to receive

Power of Survey officer in certain cases to cause marks to be erected

Penalty for removing boundary marks

Obligation to give notice of injury to boundary-marks.

rent in respect of the same or occupying it as a tenant, shall be bound to give immediate notice of the fact to the Prescribed Revenue officer ; and every person who omits to give notice as required by this section shall be liable to a fine, not exceeding one hundred rupees, to be imposed by order of the Deputy Commissioner.

27. The State Government may make rule prescribing the mode in which any survey conducted under the provisions of this Part shall be effected, and the manner in which all the cost of such a survey, compensation due on account of anything done under the orders of a Survey-officer, and all expenses incurred under this Part in erecting and repairing boundary-marks, shall be apportioned among and levied from proprietors and land-holders and persons entitled to receive rent in respect of land.

Power of State Government to make rules.

Note :— The rules which have been framed by the State Government under sections 27 and 152 for the recovery of the cost of survey and boundary marks will be found in Part II, Chapter III of Assam Land and Revenue Manual.

PART C.—ASSESSMENT OF LAND

28. All land shall be deemed liable to be assessed to revenue, except—

Land liable to assessment

- (a) land for the time being exempt from assessment under the express terms of any grant made or confirmed by, or on behalf of, the Government.
- (b) land in respect of which a tax is for the time being imposed under section 47 :

Provided that nothing in this section shall—

- (1) affect the provisions of any settlement, grant or lease for the time being in force ;
- (2) authorize the assessment of any land included in the limits of a permanently-settled estate, unless it is shown that it was not included in the permanent settlement ;
- (3) affect any title to hold land revenue-free if the title existed immediately before the commencement of this Regulation and was valid under the law then in force ; or
- (4) authorize the assessment of any land which has been held revenue-free for sixty years continuously unless it is shown that the right so to hold it has ceased to exist.

Note :—(1) When revenue-free *bakshali* lands in Cachar are alienated, they should be assessed at full rates. The heritable nature of these lands when first bestowed is open to doubt, but it has been decided not to raise this question now.

Note :—(2) The *Nisf-khiraj* lands held by the family of the Darrang Rajas were granted as a personal dignity, and are liable to assessment at full rates on alienation. An exception has been made, however, in favour of lands alienated prior to 1858.

Note :—(3) *Bona fide* places of public worship which are not already regarded as Government land should, on the application of the settlement-holder and with the consent of the worshippers concerned, be recorded, as a matter of grace, as Government land, and should be exempted from the payment of land revenue for as long as they continue to be used for public worship.

Note :—(4) When the settlement-holder is unwilling to relinquish to Government a piece of land which is used for *bona fide* public worship, but which is now included within his lease, the existing state of affairs should be maintained, that is, if the settlement-holder has hitherto been paying revenue for the land which is used for public worship he should continue to pay it; but if he has hitherto been paying no revenue for the land, he should not be called upon to do so without special orders from the State Government.

Note :—(5) Under section 3 of the Assam Assessment of Revenue Free Waste Land Grants Act, 1948 the revenue free waste land grants as specified in section 2 (1) of the same Act have been made liable to assessment of revenue on and from 1st April 1948,

Ruling :—The effect of proviso 4 to section 28 of the Assam Regulation (I of 1886) which is based on section 2 of the Bengal Regulation (II of 1805), is to exempt land from assessment if the owner can prove 60 years' possession of it without payment of any revenue during that period and thus to introduce the rule of 60 years' limitation. It is not necessary that the 60 years should be subsequent to the passing of the Assam Regulation. Proviso 2 to section 28 of that Regulation merely authorizes assessment of lands excepted from the Permanent Settlement if they do not fall under any of the saving clauses. *Ananda Kumar Bhattacharjee versus Secretary of State for India—I.L.R. 34 Cal 973 (January 1915).*

Settlement rules

29. The State Government may make rules prescribing the principles on which the land revenue is to be assessed, the term for which, and the conditions on which, settlements are to be made, and the manner in which the Settlement-officer is to report for sanction his rates and method of assessment.

Note :—For the rules framed under this section see Chapter I of the Settlement Rules,

30. The Settlement-officer shall, in accordance with the rules issued under section 29, frame general proposals of assessment for any local area or class of estates to be assessed, and submit those proposals to the State Government.

31. After the receipt of the orders of the State Government thereon, and subject to such orders, the Settlement-officer shall ascertain, and make an order, determining the amount of the assessment proper for each estate, and shall, on a date and at a place to be notified by proclamation in the prescribed manner, offer a settlement based thereon to the person with whom the settlement of the estate is to be made.

Detailed assessment and declaration thereof persons concerned.

32. (1) The Settlement-officer shall offer the settlement to such persons (if any) as he finds to be in possession of the estate and to have a permanent, heritable and transferable right of use and occupancy in the same, or to be in possession as mortgagees of persons having such a right.

To whom settlement is to be offered.

(2) If the Settlement-officer finds no person in possession as aforesaid, it shall be in his discretion, subject to such rules as the the State Government may make under section 12, to offer the settlement to any person he thinks fit.

33. (1) It shall be in the option of the person to whom a settlement is offered to accept or refuse the same.

Acceptance or refusal of settlement.

(2) If he is willing to accept it, he shall deliver to the Settlement-officer an acceptance in writing under his hand, in the prescribed form.

(3) If a person to whom a settlement has been offered does not, within the prescribed time, deliver such an acceptance or inform the Settlement-officer in the prescribed manner that he refuses the proposed settlement, he shall, if the Settlement-officer by an order in writing so directs, be deemed to have accepted the settlement.

34. When a settlement has been accepted, the revenue fixed thereby and no more shall be payable from such date and for such term, as the State Government may fix in this behalf :

Effect of acceptance of settlement.

Provided that—

- (a) The revenue shall be liable to revision according to the law for the time being in force ;
- (b) a settlement shall not be final as against the Government until it has been sanctioned by the State Government ;
- (c) in the case of gain by alluvion, or by dereliction of a river, or loss by diluvion, during the currency of the settlement, increment shall be assessed and reductions granted by the Deputy Commissioner according to such limitations as to the extent of gain

or loss and such other conditions as may be prescribed ; and

(d) in any local area to which the State Government may, by notification, apply this clause, a settlement-holder may, after giving notice at the time and in the manner prescribed, relinquish the estate of which he has accepted a settlement or any part thereof on which a separate part of the revenue has been apportioned and shall thereupon be released from all future obligation to pay the revenue of the estate, or the part thereof so apportioned, as the case may be,

Note :—Clause (d) of section 34 has been applied to all the districts within which the Regulation is in force

Effect of refusal of settlement.

Procedure when some of those to whom the settlement is offered refuse.

Settlement-officer when to apportion assessment over land.

Representation of incompetent persons and of bodies of persons.

35. If the person to whom a settlement is offered refuses to accept it, it shall be in the discretion of the Settlement-officer, subject to such rules, as the State Government may make under section 12, to exclude him for the term of the settlement from possession of the estate, and to offer the settlement thereof to any other person he thinks fit.

36. In the case of an estate held by several persons jointly entitled to an offer of a settlement, if some of those persons refuse to accept the offer, it shall be in the discretion of the Settlement-officer to exclude them from possession for the term of settlement and to offer the settlement of the whole estate to the others.

37. (1) When the whole or part of the land comprised in an estate is held in severalty, the Settlement-officer shall, on the application of any one or more of the settlement-holders, make an order apportioning to several holdings the revenue assessed on the estate.

(2) Except as provided by sub-section (1), a Settlement-officer shall not apportion the revenue of an estate over the lands comprised therein unless he is required so to do by rules made by the State Government in this behalf.

(3) No apportionment of the revenue by the Settlement-officer shall affect the joint and several liability for the revenue imposed by section 63.

38. (1) A lunatic, minor or other person incapable of making a contract, shall be deemed to be duly represented for all the purposes of this Part by his manager.

(2) A body of persons for whom representatives have been appointed in this behalf under rules made under section 155, clause (d), shall be deemed to be duly represented for

all the purposes of this Part by those representatives.

39. Subject to the provisions of section 151 of this Regulation the order of a Settlement-officer as to the person to whom a settlement should be offered, the amount of revenue to be assessed, and the nature and term of the settlement to be offered, shall be final and a settlement concluded with that person shall be binding on all persons from time to time interested in the estate; but, except as provided by sections 35 and 36, no person shall, merely on the ground that a settlement has been made with him or with some person through whom he claims, be deemed to have acquired any right to or over any estate, as against any other person claiming rights to or over that estate,

Effect of decision
of Settlement-
Officer as to
Settlement.

Ruling—Where the defendants were wrongly granted settlement and kept the plaintiffs out of possession it was competent to the Civil Court not only to declare the title of the plaintiffs but also to put them in possession by ejectment of the defendants. (*Askar Main and others versus Sabad Ali Bora Bhuiya and others—C. W. N., 32 540 (July 1889)*).

(Reviews and dissents from the rulings in *I L R. 17 Cal 819 and 24 Cal., 239*)

PART D.—RECORD-OF-RIGHTS

40. The Settlement Officer shall frame for each estate a record-of-rights in the prescribed manner.

Record-of- rights.

41. (1) Entries in the record made under section 40 shall be founded on the basis of actual possession and all disputes regarding such entries, whether taken up by the Settlement-officer of his own motion or on the application of a party concerned, shall be investigated and decided by him on that basis and all persons not in possession, but claiming the right to be so, shall be referred by him to the proper Court.

Entries in record
and their effect

(2) Every entry in the record-of-rights made under this section shall, until the contrary is proved, be presumed to be correct.

42. Notwithstanding anything contained in section 41, in the case of any dispute respecting the class of any tenant under the Rent Law for the time being in force, or the amount of rent payable by such tenant, the Settlement-officer shall decide the dispute, or, where the rent is open to alteration, fix the rent according to the principles laid down in the said Rent Law, and, subject to the provisions of section 151 of this Regulation, his order shall be final,

Determination of
class of tenants
and the rent pay-
able by them.

Chapter III—Settlement And Resumption

Note :—The Rent Law in force in the Karimganj Subdivision is the Sylhet Tenancy Act (Assam Act XI of 1936), in the permanently settled portions of the Goalpara district it is the Goalpara Tenancy Act (Assam Act 1 of 1929), and in the other parts of the State it is the Assam Temporarily Settled Areas Tenancy Act (Assam Act XXIII of 1971)

PART E.—RESUMPTION

Enquiry by Deputy Commissioners regarding land liable to resumption.

Report to State Government of result of inquiry

Order of State Government on Deputy Commissioner's report,

Suit in Civil Court to set aside State Government's order directing resumption.

House-tax or House-tax

43. Whenever a Deputy Commissioner has reason to believe that any land within his jurisdiction is being held wholly or partially free of assessment and is liable to be assessed under section 28, he may institute an inquiry, and the person claiming the land shall be bound to prove his title to hold the same wholly or partially free of assessment, as the case may be.

44. The result of every inquiry instituted by the Deputy-Commissioner under section 43 shall be reported to the State Government for orders in the prescribed manner.

45. (1) In any case reported to the State Government under section 44 if the State Government declare the land not liable to assessment, their order shall be final except on proof of fraud or collusion on the part of or on behalf of the person interested.

(2) If the State Government declare the land liable to assessment, the Deputy Commissioner shall inform the person interested of the State Government's decision, and shall proceed to assess the land in accordance with the rules made under section 29 and to settle it with the person in possession.

46. Any person whose lands are assessed by order of the State Government passed under section 45 may at any time within one year from the date of his being informed of the State Government's order, institute a suit in the Civil Court to have the order set aside, failing which the order shall be final.

PART F.—HOE-TAX OR HOUSE-TAX

47. (1) The State Government may direct that in lieu of the revenue assessable on any land there shall be collected an annual tax on each male person who has completed the age of eighteen years taking part in the cultivation of the land at any time during the year of assessment, or on each family or house of persons taking part as aforesaid.

(2) The rates of the tax, the class of persons upon whom, and the localities and mode in which, it may be assessed, shall be determined by the State Government.

NOTES :
CHAPTER—III

Settlement And Resumption (Ss. 17-47).

Chapter III deals with settlement operations and lays down the procedure for settlement of lands and the survey of lands prior to such settlement. It also provides for the preparation of record-of-rights, and prescribes the procedure for resuming land held revenue-free under invalid titles. This chapter is divided into six parts :

- (1) Part A (Ss. 17-20)—deals with the definition of settlement operation and the manner in which it is started and closed ;
- (2) Part B (Ss. 21-27)—deals with survey and demarcation of land ;
- (3) Part C (Ss. 28-39)—lays down the procedure for assessment and settlement of land ;
- (4) Part D (Ss. 40-42)—provides for the preparation of the record-of-rights for each estate ;
- (5) Part E (Ss. 43-46)—deals with the resumption of land, and
- (6) Part F (S. 47)—provides for the imposition of house-tax or hoe-tax in lieu of land revenue.

Part A

1. Settlement operation (Ss. 17-20) :

Settlement means the leasing of land at the disposal of the State Government and includes the operations of survey, classification and report, preliminary to such leasing. The settlement of a local area or class of estates means a special operation, i.e., a settlement operation carried out under the provisions of Chapter III of the Regulation for the formal revision of the land-revenue demand of that area or class of estates. The term 'settlement' has two distinct meanings : firstly, the allotment of unoccupied land (i.e., land at the disposal of the State Government) at a revenue assessment calculated at fixed rates, and secondly, the modification of the rates at which occupied land (i.e., land under previous settlement) has been assessed, and at which unoccupied land will be assessed. This latter process is distinctively known as "re-settlement".

Define "Settlement operations"
(G.U. '79)

Settlement operations included one or more of the following operations :

- (i) survey and demarcation of lands,
- (ii) assessment of land revenue, and
- (iii) preparation of record-of-rights.

Settlement operations are started after a general notification of settlement is published notifying the local area or class of estates to be settled. Settlement operations are generally taken up covering a whole district, and after the settlement is completed another notification is published declaring the settlement operations to be closed. Settlements are at present made for a period of thirty years as provided in the Assam Land Revenue Re-assessment Act, 1936.

(Under the decennial settlement rules of 1883, settlements were made for a period of ten years and when the period was over a re-settlement operation was carried out in 1893. The lands were classified mainly into three groups viz., (1) Basti (2) Rupit and (3) Fainguti and different rates were fixed for the different classes of lands and the revenue was assessed according to the classification of the land. This settlement was made for a period of ten years and when it was due to expire another settlement operation was carried out from 1902 onwards in the different districts. In this settlement operation the classification system adopted gave rise to 48 classes of lands. The term of this settlement was for a period of twenty years and on its expiry the next re-settlement operation took place in 1923 and onwards and the term of settlement was fixed for thirty years. After expiry of the term the current settlement operation took place in 1956 and onwards in the different districts. The current settlement has been made for a period of thirty years, the term and revenue rates being fixed on the basis of the Assam Land Revenue Re-assessment Act, 1936.)

Part B

2. Survey and demarcation and settlement of boundary disputes (Ss. 21-27) :

In the first phase of the settlement operation the villages are surveyed and the lands are measured and demarcated by suitable boundary-marks, and for each village a large scale cadastral map, based on the traverse survey, and showing roads, rivers, railways and other physical features of the country, as well as homesteads and other fields, is prepared. During the survey operation and the measurement of plots, disputes regarding the boundaries of the plots may arise. In that case the Survey Officer will notify it to the Settlement Officer who will settle all such disputes. Boundary disputes may arise between :

- (1) the proprietors of the different estates,
- (2) the settlement-holders of the different estates, and
- (3) the State Government and the settlement-holder as to whether any land is included in the settlement.

How will a survey officer proceed when a boundary dispute exists ?
(G.U. '68)

When the dispute is regarding the boundaries of the estates of the proprietors, the Settlement Officer has to decide it on the basis of actual possession, or where it is not so possible, he will decide by a summary enquiry as to who is best entitled to possession and accordingly put him in possession. Alternatively, he may refer the dispute to arbitration (as provided in S. 143) for decision on the merits. The decision of the Settlement Officer in such cases is appealable and is also subject to any decree or order of the competent Civil Court.

If the dispute is between the settlement-holders regarding the boundaries of their estates, or between a settlement-holder and the Government as to whether the land is comprised within the settlement, the Settlement Officer is to determine the boundaries of those estates after holding due enquiries and on the basis of evidence adduced in the case. The decision of the Settlement Officer in such cases is final subject to any order passed in revision under section 151 of the Regulation, and as such is not appealable. The Civil Court's jurisdiction in the matter is also barred under section 154 (1) (m). After the boundary disputes are thus settled, or when the boundary has been determined by any competent authority, the Survey Officer may direct to erect the boundary marks in order to secure the boundaries permanently.

3. Penalty for removing or destroying boundary marks (Ss. 25-26) :

A person wilfully destroying, damaging or removing any boundary-mark is liable to be punished with fine upto two hundred rupees for each such mark. He is also liable to pay the costs of restoring the boundary-mark so destroyed or removed. Further, a proprietor or settlement-holder and every person entitled to receive rent or occupying the land as a tenant are bound to inform the Sub-Deputy Collector in charge of Land Records about any injury or removal of boundary-marks erected on the land ; and the person who fails to give the information is liable to be penalised with a fine not exceeding one hundred rupees which may be imposed by the Deputy Commissioner.

Survey Rules : For purposes of survey and demarcation of lands, Rules 97-107 have been framed under sections 27 and 155 of the Regulation. These rules have prescribed the mode in which a survey is to be effected, and for apportioning the expenses incurred in effecting the survey and in erecting and maintaining the boundary-marks and also compensation due on account of anything done under the orders of a Survey Officer.

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The costs and expenses are realisable from proprietors or land-holders and persons entitled to receive rent in respect of the land included in the survey.)

Part C

Assessment of land and offer of Settlement (Ss. 28-29):

4. Lands liable to assessment (S.28) :

All lands are liable to be assessed to revenue except the lands expressly exempted from assessment, and the lands for which house-tax or hoe-tax is collected in lieu of land-revenue. The classes of lands that are exempted from assessment of land-revenue are :

(1) lands held free from assessment of revenue under the terms of any grant made or confirmed by the Government. The *lakhraj* and fee-simple estates and the revenue-free lands under the Waste Land Grants Rules come within the category of such revenue-free lands. The fee-simple estates and the revenue-free lands under the Waste Land Grants Rules have, however, been made liable to assessment of revenue by the Assam Assessment of Revenue Free Waste Land Grants Act, 1948 ;

(2) lands for which an annual tax, such as hoe-tax or house-tax, is imposed under section 47 in lieu of land revenue ;

(3) lands held under existing settlements, grants or leases are not to be affected ;

(4) lands held revenue-free from before the commencement of the Regulation. The *Baksha* estates of Cachar are lands held revenue-free. These were originally granted by the Cachari Kings to their priests or servants. These estates were accepted as revenue-free so long as these remained in the family of the original holder, but liable to assessment when transferred otherwise than by inheritance ;

(5) lands included in the limits of a permanently-settled estate ; and

(6) lands held revenue-free for sixty years continuously. The owner of such lands can claim exemption from assessment of revenue if he can prove sixty years' possession without payment of revenue for that period.

5. Settlement Rules (S. 29) :

As empowered by sections 12 and 29, Settlement Rules have been framed by the State Government. Chapter I of the Rules so framed contains the rules for settlement and re-settlement. Under the Rules the Deputy Commissioner is vested with the powers to dispose of waste lands by grant,

lease or otherwise, subject to the general or special orders of the State Government. The Deputy Commissioner may delegate the power to grant settlement of land to subordinate Revenue Officers not below the rank of Sub-Deputy Collector whose orders will be subject to revision by the Deputy Commissioner. During settlement operations Settlement-Officers are appointed (S. 133), and they exercise the powers of Deputy Commissioner. Section III of Chapter I of the Settlement Rules (Rules 48-63) provides for the settlement and re-settlement of land during the settlement operations, the mode of assessment of land and preparation of the record-of-rights. The assessment of and consists of the following processes (R 55) :—

- (a) Preliminary record writing, and field classification.
- (b) Record attestation.
- (c) Submission of assessment reports
- (d) Revenue attestation
- (e) Offer of settlement

6 Assessment of Revenue (S. 30) :

Revision of land-revenue demand is an essential part of the settlement operation. Before issuing the notification of settlement, a forecast report explaining the main factors justifying a revision of the assessment is obtained by the State Government. During settlement operations the revenue rates and also the term for which the land-revenue is to be assessed are fixed on the basis of the provisions of the Assam Land Revenue Re-assessment Act, 1936. For the purpose, the Settlement Officer frames general proposals of assessment. In the framing of general proposals of assessment the Settlement Officer is required to consider : (1) the economic conditions of those who live mainly by agriculture, (2) the value of agricultural produce, (3) the cost of production, and (4) the letting and selling value of land. For purposes of assessment for each estate, the villages and the fields are classified, and a fair rate per bigha is fixed for each class of land. The Settlement Officer then submits his report, containing his proposals of assessment, to the Director of Land Records who publishes the report and after considering the objections, if any, submits the report with his recommendations for the orders of the State Government. On the orders of the State Government the revenue rates are fixed and at the approved rates the Settlement Officer determines the revenue payable for each estate.

7. Offer and acceptance of Settlement (Ss. 31-38) :

During settlement operations the Settlement Officer prepares the record-of-rights for each estate. The record-of-rights is the *Jamabandi* based on the *Chitha* and the field maps prepared during the settlement operation. (For details regarding the preparation of record-of-rights vide Part D page 46.) The Settlement Officer thereafter prepares, signs and seals periodic or annual leases, as the case may be, which correspond in all particulars with the entries in the record-of-rights. The settlement is made by granting annual or periodic lease. Persons who are in possession of the estate and have permanent heritable and transferable rights of use and occupancy therein (i. e., persons who have already acquired the status of land-holders in respect of the land) are offered the settlement by granting periodic leases. In other cases the Settlement Officer can offer settlement to persons he thinks fit. For purpose of issuing leases the Settlement Officer issues a proclamation notifying the date on which and the place at which the leases will be offered to the persons with whom the settlement is to be made. On the date and the place so fixed the Settlement Officer, or any other officer deputed by him for the purpose, tenders the leases to the persons present and entitled to receive the same, In case of their absence a copy of the general notice to the effect that the leases standing in their names have been offered to them is affixed, within three days of the said date, at some conspicuous place in the neighbourhood of the centre selected for the distribution of the leases. The tender of the lease, or the affixing a copy of the notice containing the offer of the lease, is deemed to be an offer of settlement within the meaning of sections 31-39 of the Regulation.

The person to whom the settlement is so offered has the option to refuse it, and in that case, within thirty days of the offer, he has to inform the Settlement Officer of his refusal by noting in writing on the lease and returning it to the Settlement Officer. If some of the several persons jointly entitled to the offer of settlement refuse to accept the offer, the Settlement Officer can offer the settlement of the entire estate to the others. If there be no such refusal the settlement will be deemed to have been accepted and the settlement becomes final.

The settlement thus being made final, the settlement-holder becomes liable to pay the revenue assessed on the

estate during the currency of the settlement. The revenue assessed on the estate is, however, subject to revision according to the law in force. Further, if there is gain to the estate by alluvion or by dereliction of a river, the increased area will be assessed to revenue, while in the case of loss by diluvion the Deputy Commissioner will grant reduction in the revenue proportionate to the loss of area.

During the currency of the settlement the settlement-holder has been given the right to relinquish, after giving the required notice, the estate or any entire field (Dag) thereof on which a separate part of the revenue is apportioned. In that case the settlement-holder will be released from all future obligation to pay the revenue of the estate or the portion so relinquished.

(Rule 24 prescribes the procedure for such resignation. Under this Rule the settlement-holder, after paying the revenue due in respect of the estate or the fields proposed to be relinquished, is required to tender a written petition to the Deputy Commissioner. The latest date for such petition is 15th February.)

8. Apportionment of Revenue (S. 37) :

Where lands comprised in an estate are held in severalty by several persons, the Settlement Officer can, on the application of one or more of the settlement-holders, apportion the revenue of the estate to the several holdings. Such apportionment determines the revenue payable by a co-sharer in respect of his share. The liability to pay the revenue of the entire estate is, however, joint and several (S. 63). A co-sharer, therefore, paying his share of the revenue cannot avoid his liability for the revenue of the entire estate if other co-sharers default in payment of their shares of revenue.

9. Finality of the order of the Settlement Officer (S.39):

The order of the Settlement Officer as to :

(1) the person to whom the settlement should be offered,

(2) the amount of revenue to be assessed, and

(3) the nature and term of the settlement to be offered, is final. Such orders are, however, subject to any order passed in revision by the Assam Board of Revenue which, under section 151 of the Regulation, can call for the records of proceedings held by the officers subordinate to it and pass such orders as it thinks fit. As these orders of the Settlement Officer are final subject to any orders passed under section 151, no appeal, therefore, lies against

On what basis are record-of-rights prepared? Is record-of-rights decisive of title in the land?
(G.U. '73)

preparation of the record-of-rights disputes regarding the ownership of land or interests therein are decided by the Attestation Officer in a summary manner and on the basis of actual possession. The record-of-rights is prepared on the basis of actual possession, and the entries in the record-of-rights, though are *prima facie* evidence of possession as proprietor or settlement-holder of an estate, that evidence cannot be treated conclusive as to proprietary title. Where entries in the record-of-rights are disputed the Settlement officer has to decide it on the basis of actual possession, and the person who is not in possession but claims a right to be so is to be referred to the Civil Court. The person aggrieved by such wrong entries in the record-of-rights can thus seek his remedy in the Civil Court for declaration of his title. The Civil Court, on proper proof of title, will not only declare his title to the land but also put him in possession by ejecting the person wrongfully in possession.

Part E.

12. Procedure for resumption of land (Ss 43-46) :

Resumption means assessment of an estate held free of assessment though it is liable to be assessed to revenue. In respect of such estate the Deputy Commissioner may institute an enquiry in which case the person holding such an estate is to prove his title to hold it revenue-free. The Deputy Commissioner after enquiry submits his report to the State Government who may declare the land liable to assessment. In that case the Deputy Commissioner informs the party interested about the Government's order and proceeds to assess the land and settles it with the person in possession. The person affected may bring a suit in the Civil Court for setting aside the Government's order within one year from the date when he is informed about the order

Part F

13. Hoe-tax or House-tax (S. 47) :

Hoe-tax or house tax is an annual tax that may be collected in lieu of revenue assessable on any land. The State Government may direct imposition of this annual tax either, (1) on the persons above the age of 18 years, or (2) on each family or house of persons, taking part in cultivation of the land at any time during the year of assessment.

The rate of the tax, the mode of assessment and the localities where, and the person on whom, the tax may be imposed will be determined by the State Government.

Write short notes on 'resumption'.
(G.U. '68)

Define hoe-tax or house-tax.
(G.U. '62)

When this tax is imposed on a family or house, all members of the family or house above the age of 18 years and taking part in the cultivation of the land or any part of it during the year of assessment are jointly and severally liable for the amount due (s. 64).

Summary

14. Settlement operation and how it is carried out :

Settlement means allotment and the leasing of lands at the disposal of the State Government, and the granting of fresh leases to the settlement-holder at the modified revenue rates on the expiry of the period of the last settlement.

Settlement operations include all or any of the following :

- (A) survey and demarcation of lands
- (B) classification, and assessment of land revenue ;
- (C) the preparation of the record-of-rights.

Settlement operations are started after a notification of settlement is published notifying the local area or class of estates to be settled, and the area will be under settlement from the date of the notification until the issue of another notification declaring the settlement operations to be closed. Settlement operations are generally taken up covering a whole district.

(A) In the first part of the operation lands under settlement are surveyed and a large scale cadastral map for each village is prepared. During the survey, whenever boundary disputes are found to exist, the Survey Officer notifies it to the Settlement Officer who determines the disputes after necessary enquires. After the boundary dispute has been finally determined, the Survey Officer may cause boundary-marks to be erected in order to secure the boundary permanently.

(B) In the second part of the operation lands which are liable to assessment of revenue are classified and the records such as the draft *Chitha* and the draft *Jamabandi* are prepared, and are corrected after record attestation. Thereafter the Settlement Officer frames proposals for the revenue rates on the basis of the provisions of the Assam Land Revenue Re-assessment Act, 1936 and submits his report on the assessment of revenue for the next thirty years period to the State Government through the Director of Land Records. After approval of the State Government on the revenue rates, the Settlement Officer calculates the

What are settlement operations ?
How are they carried out ?
(G.U. '73)

Write short notes on Settlement operation
(G.U. '77)

How is a settlement operation carried out. State the preparation of record-of-rights.
(G.U. '81)

total revenue payable for each estate at the sanctioned rates. The revenue attestation of each village is then taken up and the revenue for each estate is finalised.

(C) During settlement operations record-of-rights for each estate is prepared. The record-of-rights is the *Jamabandi* based on the *Chitha* and the field map. After a village has been surveyed and demarcated a draft *Chitha* or field index is prepared showing the classification and the area of each field, and the names of the persons in possession of each field. A draft *Jamabandi* is then prepared showing, in addition to other particulars, the fields which have been found in the possession of each proprietor or settlement-holder, and the classification and the area of each field as entered in the draft *Chitha*. Each proprietor or settlement-holder is thereafter furnished with the extracts from the draft *Jamabandi*. The record attestation of each village is then taken up by the Settlement Officer or Assistant Settlement Officer (called the Attestation Officer) after a proclamation duly published in the village giving due notice to the proprietors and settlement-holders and calling on them to appear before him. Dispute regarding the ownership of land or of any interest in the land is decided by the Attestation Officer in a summary manner and on the basis of actual possession. This is known as record attestation. After the revenue rates are fixed by the State Government the revenue attestation is done and necessary corrections are made. Thereafter the revenue for the estate so assessed is entered in the *Jamabandi* which is then finalised. This final copy of the *Jamabandi* is the record-of-rights of the proprietors or settlement-holders. The Settlement Officer then prepares, signs and seals periodic or annual leases, as the case may be, which correspond in all particulars to the entries in the record-of-rights, and after issuing a proclamation tenders the leases to the persons in whose names the leases stand. This tender of lease is an offer of settlement, and the settlement thus offered is deemed to have been accepted unless the person to whom the settlement is offered, within thirty days of the offer, informs the settlement Officer in writing on the lease and returning the same that he has refused to take the settlement.

Chapter IV—Registration

CHAPTER IV REGISTRATION

Part A—The Preparation and Maintenance of Registers

48. (1) The Deputy Commissioner of every district shall prepare and keep the following registers ;—

- (a) a general register of revenue-paying estates ;
- (b) a general register of revenue-free estates ; and
- (c) such other registers as the State Government may direct.

Registers to be kept.

(2) The registers shall be written in the prescribed form and language, and shall be prepared, arranged, kept and maintained in the prescribed manner.

Note :—For the general registers prescribed under this section, see the rules framed under Chapter IV.

49. Until registers are prepared for any tract under section 48, the State Government may direct that any registers kept by or under the control of the Deputy Commissioner at the commencement of this Regulation shall be deemed to be registers prepared under that section.

Existing Registers

Note :—(1) The forms of general register prescribed in the rules under Chapter IV of the Regulation, in accordance with section 48, have been written up for waste land grants and revenue-free estates throughout the State and for permanently-settled estates in Goalpara.

(2) They have not been written up for permanently-settled estates in Karimganj Subdivision of Cachar District. It has been decided that it would be a waste of time and labour to attempt the preparation of a general register of permanently-settled estates in the absence of cadastral survey of the Subdivision. It has also been found impossible to substitute any register for the general register by a notification under section 49.

Part B.—Registration

50. After the commencement of this Regulation—

- (a) every proprietor or land-holder succeeding to any estate, or share in an estate, whether by transfer or inheritance, and obtaining possession of the same ;
- (b) every joint proprietor or joint land-holder, of any estate assuming charge of the estate or of any share therein on behalf of the other proprietors or land-holders thereof ;
- (c) every person assuming charge of any estate of a proprietor or land-holder, or of any share therein as manager ; and

Liability of persons succeeding to estates to give information of succession.

(d) every mortgagee obtaining possession of any estate of a proprietor or land-holder, or of any share therein :

shall, within six months from the date of taking possession or assumption of charge, apply to the Deputy Commissioner of the district on the general registers of which the estate is borne for registration of his name as such proprietor, land-holder, manager or mortgagee, and of the nature and extent of the interest in respect of which the application is made.

Note—District Officers are responsible that the registers (*jamabandis* in the case of ordinary *raiyatwari* land) are maintained to date by the entry of all charges in proprietary possession.

(2) They should get information from the Registering Officer regarding all deeds affecting rights in land which are produced before them for registration, a clerk being deputed once a week, if necessary, to extract the required information from the Sub-Register's books. Where a separate registration clerk is entertained, the required information should be furnished monthly by the Sub-Register in the following form :—

- (i) Name of Sub-registry officer.
- (ii) Name and address of transferor,
- (iii) Name and address of transferee,
- (iv) Name and number of estate : its *pargana* and *mauza*.
- (v) Specification of share transferred.
- (vi) Date and description of deed.
- (vii) Date of Registration.
- (viii) Remarks.

(3) It is the duty of the *mandal* or *patwari* to bring to notice all changes which he discover in the course of his annual tours. The procedure to be followed in registering these changes after local investigation instead of by inquiry in Court is described in the Land Records Manual. The obligation of the *mandal* or *patwari* to report changes does not absolve private persons from liability under sections 50 and 51.

Existing proprietor, etc., may apply for registration.

51. Every person who, at the commencement of this Regulation is in the possession of an estate or any share in an estate as proprietor or land-holder or as manager of the estate of a proprietor or land-holder, or as mortgagee, may apply to the Deputy Commissioner of the district on the general register of which the estate is borne for registration of his name as such proprietor, land-holder, manager or mortgagee and of the nature and extent of the interest in respect of which the application is made.

Procedure on application for registration.

52. (1) On receiving an application under section 50 or section 51, the Deputy Commissioner shall, if he considers there are sufficient grounds for proceeding with the application, publish a notice requiring all persons who object to the registration of the name of the applicant, or who dis-

pute the nature or extent of the interest in respect of which registration is applied for, to give in a written statement of their objections, and to appear on a day to be specified in the notice, not being less than one month from the date thereof.

(2) If the application alleges that the applicant has acquired possession of the estate, or share in an estate in respect of which he applies to be registered by transfer from any person, a copy of the notice shall be served on the alleged transferor, or, if he is dead, upon his heirs.

53. On the day fixed in the notice issued under section 52, or as soon thereafter as possible, the Deputy Commissioner shall consider any objections which may be advanced, and, after such further inquiry (if any) as appears necessary to ascertain the truth of the succession, assumption of charge or possession alleged in the application, shall, if it appears to him that the succession accompanied by possession has taken place or that charge has been assumed or that the applicant is in possession, as the case may be, make an order directing the registration.

*Inquiry by
Deputy
Commissioner.*

Note—In uncontested cases evidence need not be recorded unless the registering office considers inquiry by the examination of witnesses necessary as to the fact of possession.

53. A (1) Notwithstanding anything contained in sections 50 to 53, where the Deputy Commissioner has received information, otherwise than through an application, of any such taking of possession or assumption of charge as is referred to in section 50, he may make an order directing the registration of the name of the person so taking possession or assuming charge.

*Powers to Deputy
Commissioner to
direct registration on information received otherwise than through application.*

Provided that—

- (a) the information has been verified by local inquiry made by an officer not below the rank of an Assistant Settlement-Officer, or
- (b) notice has been published and inquiry has been held in the manner prescribed by sections 52 and 53 as if an application for registration had been received from the person to whom the information relates.

(2) where any person is aggrieved by an order directing registration under this section which has been made after verification of the information received by local inquiry only, he may within a period of 3 years of the date of such order

apply to the Deputy Commissioner to have such order set aside, and on receipt of such application the Deputy Commissioner shall cancel the registration and then proceed to publish the notice and hold the inquiry prescribed by sections 52 and 53 as if an application for registration had been received from the person whose name had been registered.

Note—(1) For the procedure to be followed in dealing with mutation cases, by local investigation see the instructions in the Assam Land Records Manual. A case which has been disposed of by local investigation may be reopened on application, and should then be dealt with formally by inquiry in Court. Cases which cannot be disposed of by local investigation,—including, generally, all cases in which a dispute exists,—must be made the subject of formal inquiry in Court, after issue of notice according to the procedure laid down by the Registration Rules.

Note—(2) Petition of objection to applications for mutation must be stamped.

(3) The payment of land revenue in respect of the interest to be registered should not be made a condition precedent to registration.

54. If, in the course of an inquiry made under section 53, a dispute regarding the fact of possession arises, and the Deputy Commissioner is unable to satisfy himself as to who is in possession, he shall ascertain by summary inquiry who is the party best entitled to possession, and shall put him in possession and make the necessary entry in the proper register accordingly.

Note—(1) Orders should not be passed under this section on the summary local inquiry of Sub-Deputy Collector.

(2) Officer conducting summary registration inquires under sections 53 and 54 should not let them drift into full and regular inquiries such as would have to be held in order to dispose of the matter finally in the Civil Court. It is necessary also to avoid going to the opposite extreme. The question of how deeply Revenue Officers should go into the matter is one of degree and can only be determined by plain commonsense.

(3) The nature and extent of the interest must be recorded in all registration cases, even when the determination on this point is one of great difficulty.

55. After the commencement of this Regulation, any person who holds a *talukdari* or other similar tenure which has been created since the time of the Permanent Settlement, and is held immediately from the proprietor of a permanently-settled estate, may apply to the Deputy Commissioner to have the tenure registered.

56. (1) On receiving an application under section 55 the Deputy Commissioner shall serve a notice on the recorded proprietors of the estate in which the tenure is situated,

Power to put one party in possession in case of dispute.

Registration of tenures in permanently-settled estates.

and shall also publish a general notice requiring the proprietors or any persons interested, who object to the applications, to file within thirty days from the date of the notice a written statement of their objections,

(2) If within the time specified no objection is made, the Deputy Commissioner shall register the tenure.

(3) If within the time specified an objection is made by any recorded proprietor, or by any person interested not being a proprietor, the Deputy Commissioner shall examine the person so objecting and, if it appears that he has probable ground of objection, shall suspend proceedings and refer the parties to the Civil Court.

(4) Provided that no tenure shall be registered under this section unless the Deputy Commissioner is satisfied that it has been created in good faith and at a rent not less than the full amount of the revenue fairly payable in respect of the lands comprised in it.

57. On any registry under this Chapter, fees may be levied from the person in whose favour the registration is made at the prescribed rates.

Note—For the rates prescribed, see Rule 126 or the rules framed under this Chapter.

58. (1) If any person, being required by section 50 to apply for registration, voluntarily or negligently omits to do so within the time specified in that section, he shall be liable to a fine, to be imposed by the Deputy Commissioner which may extend to five times the amount of fee which would be payable under section 57 for registration and to such further daily fine as the Deputy Commissioner may think fit to impose, not exceeding one rupee for each day during which the person omits to apply for registration after a date to be fixed by the Deputy Commissioner in a notice requiring him to apply for registration ; and

(2) A person required by section 50 to apply for registration shall not acquire, or be deemed to have acquired, as against the Government any interest in land as proprietor, land-holder, manager or mortgagee, or be entitled to prefer any claim against the Government in respect of such interest, as long as he omits to apply for registration, but shall be subject to all the liabilities of a proprietor, land-holder, manager or mortgagee so far as regards the payment of revenue and all other obligations to the Government.

Procedure on application for registration under section 55.

Registration fee.

Penalty for non-registration.

No person bound to pay rent to unregistered proprietor, etc

59. (1) No person shall be bound to pay rent to any person claiming it as proprietor, land-holder, manager or mortgagee in possession of an estate, unless the name of the claimant has been registered under this Chapter.

(2) No person, being liable to pay rent to two or more such proprietors, land-holders, managers or mortgagees, shall be bound to pay one such proprietor, land-holder, manager or mortgagee more than the amount which bears the same proportion to the whole of the rent as the extent of the share in respect of which the proprietor, land-holder, manager or mortgagee is registered bears to the entire estate,

Part C—Miscellaneous

60 Subject to the prescribed conditions and to payment of the prescribed fees, all registers kept under this Chapter shall be open to public inspection, and subject as aforesaid, the Deputy Commissioner shall supply an extract from any such register to any person who may apply for the same.

Note—For the fees, etc., prescribed under this section see Rule 129 of the rules frame under this Chapter.

Public entitled to inspect and to apply for extracts from registers.

Power of Deputy Commissioner to pay recorded proprietors, etc money due to them in accordance with their registered interests.

61. Whenever any sum of money is payable (otherwise than under the Land Acquisition Act. 1894) by the Deputy Commissioner to two or more proprietors, land-holders, managers or mortgagees in possession of an estate, the Deputy Commissioner may pay to any one or more recorded proprietors, land-holders, managers or mortgagees thereof, respectively, such portions of the said sum as may be proportionate to the extent of the interest in respect of which each such proprietor, land-holder, manager or mortgagee is registered, and the receipt of each such proprietor, land-holder, manager or mortgagee shall afford full indemnity to the Deputy Commissioner in respect of any sum so paid.

62. Nothing contained in this Chapter and nothing done in accordance therewith shall be deemed to—

(a) preclude any person from bringing a suit in the Civil Court for possession of, or for declaration of his right to any immovable property to which he may deem himself entitled; or

(b) render the entry of any land in any register under this Chapter as revenue-free an admission on the part of the Government of the right of the person in whose name the land may be entered, or an admission of the validity of the title under which the said land is held revenue-free.

Saving clause.

NOTES :

CHAPTER—IV
Registration (Ss: 48-62)

This chapter provides for the maintenance of general registers, and for registration of names of the proprietors and land-holders succeeding to an estate by transfer or inheritance.

1. The preparation and maintenance of Registers (S. 48):

The Deputy Commissioner of every district has to maintain general registers of both revenue-paying and revenue-free estates. The General Register of revenue-paying estates consists of three parts (R. 108) :

Part I—for permanently-settled estates ;

Part II—for temporarily-settled estates other than waste land grants. This is kept in the periodic *Jamabandi* form until the district has been re-settled, when a fresh *Jamabandi* Register is prepared by the Settlement Officer.

Part III—for waste land grants other than fee-simple and redeemed leases.

The General Register of revenue-free estates is maintained in Forms No. 21 to 24 (vide Assam Land Revenue Manual Vol. II) according to the district in which it is kept (R. 109).

These registers are to be maintained upto date by recording the changes in the proprietary possession. This recording in the register, of the names of the proprietors or land-holders succeeding to an estate or a share therein by transfer or inheritance and taking possession thereof, is known as Registration, or commonly called Mutation.

2. Persons who are required to apply for registration (S. 50) :

Section 50 contemplates four classes of persons who are required to apply for registration of their names,

They are :

(1) a person succeeding to an estate, or a share therein as proprietor or land-holder by transfer or inheritance, and obtaining possession of the land.

Is a land-holder or proprietor bound to apply for registration of his name under the Regulation ? (G.U. '62)

Who can apply for registration (mutation) of names.
(G. U. '77.)

On what basis mutation of name of land-holder may be obtained ?
(D. U. '67.)

Describe the procedure for registration of name of a successor to an estate under the Assam Land and Revenue Regulation.
(D.U. '68)
(G.U. '68)

What is the procedure for registration.
(G.U. '77)

(2) a joint proprietor or joint land-holder assuming charge of the estate, or a share thereof on behalf of the other proprietors or land-holders,

(3) a manager taking charge of the estate of a proprietor or land-holder, and

(4) a mortgagee in possession of the estate, or any share therein.

A person coming under the above categories is required to apply to the Deputy Commissioner of the district for registration of his name in the general register as such proprietor, land-holder, manager, or mortgagee, stating the nature and extent of his interest. Such application is to be made within six months of his obtaining possession, or assumption of charge of the estate. A person succeeding to an estate is entitled to registration of his name only when he takes possession of the same. For registration, acquisition of title to the estate alone is not sufficient, but in addition, the applicant must obtain possession which is an essential condition for the granting of registration (i.e., mutation) of name. Thus mutation can be granted only on the basis of possession subject to there being a *prima facie* title.

(Application for mutation of names shall be in Form No. 26 and shall be signed and verified by the applicant or his agent with a declaration that the particulars contained therein are true to the best of his knowledge and belief (Rule 120). For Form No. 26 see the Assam Land Revenue Manual Vol. II)

3. Procedure for registration (Ss. 52—54) :

Sections 52 and 53 deal with the procedure to be followed by the Deputy Commissioner in passing an order directing registration when an application is made before him. Section 53 A provides the procedure when the Deputy Commissioner acts on the information received otherwise than through an application.

When an application for registration is made, the Deputy Commissioner, on entertaining such an application, causes a general notice to be published calling for written objections from persons who may object to the registration of the name of the applicant, or dispute the nature or extent of the interest claimed in the application. The date for submitting objections is so fixed that it is not less than one month of the date of the notice. In the case where the applicant acquired the estate or share thereof by transfer from a person, a copy of the notice is to be served on the transferor, or if he is dead, on his heirs.

On the date fixed in the notice, or on the date to which the case may be postponed, the Deputy Commissioner considers the objections that may be submitted, and after further enquiry, if any, and if it appears to him that succession accompanied by possession has taken place, or that charge of the estate has been assumed or possession taken, the Deputy Commissioner passes the order directing registration of the applicant's name to the extent of his interest. For obtaining registration it is necessary to show that the applicant has *prima facie* title to, and that he obtained possession of the estate.

The Deputy Commissioner is also empowered to grant registration even though he may not have received any such application. He can proceed to effect registration if he has received other information about the succession and possession or assumption of charge of an estate. In that case the Deputy Commissioner can proceed in either of the following ways :

(i) he may cause notices to be published inviting objection, if any, and hold the necessary enquiry in the same manner as when an application for registration is before him, or

(ii) he may get the information verified by local enquiry made by an officer not below the rank of an Assistant Settlement Officer. The registration or mutation granted after such local investigation can be reopened by an application to the Deputy Commissioner made within three years of the order for setting aside the order. On receiving such an application the Deputy Commissioner will cancel the registration and proceed to hold the enquiry after publishing the required notice as if an application for registration has been received.

After registration is granted, the general register is corrected and necessary entries made in terms of the order.

4. Registration when possession is disputed (S. 54):

In a registration proceeding the Deputy Commissioner has to satisfy himself as to whether succession accompanied by possession has taken place. To obtain mutation the applicant has to show that he has *prima facie* title to, and that he obtained possession of the estate. Taking possession of an estate is a pre-requisite for granting registration or mutation. The fact of possession has to be ascertained by the Deputy Commissioner before passing the

*On what basis
mutation of name
of land-holder may
be obtained ?
(G.U. '67)*

order directing registration of name. Where, however, possession is disputed and the Deputy Commissioner is unable to satisfy himself as to who is in possession of the estate, he is to decide by a summary enquiry as to the party who is best entitled to possession, and accordingly puts him in possession, and orders for registration of his name in the proper register.

5. Penalty for non-registration (S. 58) :

A person succeeding to an estate and obtaining possession thereof, and also a manager assuming charge of an estate, and a mortgagee in possession are required to apply for registration of their names within six months of taking possession of the estate. If such a person voluntarily or negligently omits to apply for registration within the specified time of six months, he will be liable to a fine not exceeding five times the fee payable for registration. The Deputy Commissioner may also issue a notice requiring the person to apply for registration within a date fixed in the notice. If the person fails to apply for registration as required by the notice, the Deputy Commissioner may impose an additional fine not exceeding one rupee for each day of default from the expiry of the date in the notice. Other consequences also follow non-registration. A person is not entitled to claim any interest in land against the Government as proprietor, or land-holder, or mortgagee in possession, so long as he omits to apply for registration, but his liability to pay the revenue and other obligations to the Government will remain. Further, before a person can have a legal claim to the rents, he must get his name registered as the proprietor, land-holder, manager or mortgagee in possession, as the case may be, and until his name is so recorded the tenants are not bound to pay rent to him.

6. Mutation and its effects (S. 62) :

Mutation of name is granted on the basis of a *prima facie* title to, and possession of the estate. In a mutation proceeding the Deputy Commissioner has to determine as to the party who is in possession of the land, and when it is not possible to determine actual possession, he has to ascertain by a summary enquiry as to the party who is best entitled to possession, and accordingly to put him in possession of the estate and make the necessary entry in the proper register. A mutation entry in the record-of-rights implies (under S. 41 (1) read with S. 53) a presumption of possession in

Is a land-holder or proprietor bound to apply for registration of his name under the Regulation?

What is the penalty if the land-holder or proprietor fails to apply for registration?

(G.U. '62)

favour of the recorded proprietor or land-holder unless rebutted. Proceedings for mutation of names are not judicial proceedings in which title to and proprietary rights in immoveable property can be determined. Revenue authorities have no jurisdiction to pronounce upon the validity of claims of title so that orders in mutation proceedings cannot be treated as conclusive evidence of proprietary title. Such an entry may, *prima facie*, be good evidence of possession and even of the right to hold the land, but in law it is not conclusive. A person is entitled to bring a suit in the Civil Court for possession of, and for declaration of his right and title to any immovable property.

(Rule 116 framed under Chapter IV gives power to the Deputy Commissioner to strike out the name of the proprietor or settlement-holder from the General Register if he is no longer in possession of any such interest in the estate. Such order to strike out the name of any recorded proprietor or land-holder can only be passed after giving him due notice, and hearing any objections that may be preferred against his name being struck out.)

CHAPTER V
ARREARS AND MODE OF RECOVERING THEM
LIABILITY FOR REVENUE AND DEFAULT

Liability for land-revenue, etc.

63. Land-revenue payable in respect of any estate shall be due jointly and severally from all persons who have been in possession of the estate or any part of it during any portion of the agricultural year in respect of which that revenue is payable.

Liability for house tax of families of cultivators.

64. When tax is imposed on a family or house in respect of the cultivation of any land, the amount due for any year of assessment from the family or house shall be due jointly and severally from all males of the family or house, who at any time during the year, being then above the age of eighteen years, took any part in the cultivation of the land.

Procedure when co-proprietor of permanently settled estate desires to pay separately.

65. (1) When there are several recorded proprietors of a permanently-settled estate, any one of them, whether he is entitled to a share of the estate or to particular lands comprised therein, may, if he desires to pay his share or portion of the revenue separately, submit a written application to that effect to the Deputy Commissioner specifying his share of the estate or the particular lands therein to which he is entitled, and when he claims particular lands the portion of the revenue for which, as between him and his co-proprietors, he is liable.

(2) The Deputy Commissioner shall then publish a notice requiring all persons who object to the application to appear within six weeks from the date of the notice and give in a written statement of their objections.

(3) If within the period specified in the notice no objection is made by any recorded co-proprietor of the estate, the Deputy Commissioner shall open separate accounts for the applicant's share or lands and for aggregate of the shares or lands of the other proprietors, and shall credit separately in those accounts all payments made by him and them respectively.

(4) If any recorded co-proprietor of the estate objects that the applicant has no right to the share or lands claimed by him, or that his interest in the estate is less or other than that claimed by him, or, if the application is in respect of particular lands, that the amount of revenue stated by the applicant to be payable on account of those,

lands is not the amount which is recognised among the co-proprietors as the revenue thereof, the Deputy Commissioner shall refer the parties to the Civil Court, and shall suspend proceedings until the objection is withdrawn or the question at issue is judicially determined.

(5) The opening of separate accounts under this section shall not affect the joint and several liability imposed by section 63 except in so far as is, by this Regulation, expressly provided.

66. Every sum payable under this Regulation on account of land-revenue, shall fall due on such date, and shall be payable in such manner, in such instalments at such place and to such person, as may be prescribed.

76. Land-revenue not paid on the date when it falls due shall be deemed to be an arrear ; and every person liable for it shall be deemed to be a defaulter.

Notice of Demand

68. (1) When an arrear has accrued, an additional charge by way of penalty not exceeding one rupee may be levied.

(2) If the arrear is not in respect of a permanently-settled estate, the prescribed officer may in his discretion, before employing any of the processes for enforcing payment prescribed by this Chapter, issue a notice of demand, calling on the defaulter to pay the amount within a time specified.

Provided that, in such classes of cases, not being cases in which an arrear has accrued in respect of a permanently-settled estate, as the State Government may direct in this behalf, the prescribed officer shall not employ any such process for enforcing payment as aforesaid, until he has issued a notice of demand and the defaulter has failed to pay the arrear within the time specified in such notice.

Note :—(1) For the "prescribed officer" referred to in this section, see rule 133 framed under this chapter,

Note :—(2) This section, it will be observed, empowers a Deputy Commissioner to issue in his discretion a notice of demand as an alternative to a warrant, and the issue of notice should precede the issue of warrant in the case of land-holders of position who are ordinarily regular payers,

Note :—(3) In the case of temporarily-settled areas the practice of issuing a notice of demand has been discontinued.

Sale of Moveables

69. (1) The Deputy Commissioner may, for the recovery of an arrear, order the attachment and sale of so much of a defaulter's moveable property as will, as nearly as may be, defray the arrear.

Revenue when due, and where and to whom payable.

"Arrear" and "defaulter" defined

Penalty leviable on arrears and notice to demand.

Attachment and sale of moveables.

(2) Every such attachment and sale shall be conducted according to the law for the time being in force for the attachment and sale of moveable property under a decree of a Civil Court, subject to such modifications thereof as may be prescribed by rules framed by the State Government for proceedings under the Assam Land and Revenue Regulation.

(3) Nothing in this section shall authorise the attachment and sale of necessary wearing apparel, implements of husbandry, tools of artisans, materials of houses and other buildings belonging to and occupied by agriculturists, or of such cattle or seed-grain as may be necessary to enable the defaulter to earn his livelihood as an agriculturist.

Note—When the Deputy Commissioner intends to proceed against a defaulter's moveable property lying in a district, other than the district in which the arrear accrued, the provisions of section 3 of the Revenue Recovery (Act 1 of 1890) should be followed.

Attachment of Defaulting Estate

Attachment of estate, application of profits and duration of attachment.

69. A (1) When an arrear has accrued in respect of a temporarily-settled estate, the Deputy Commissioner, with the previous sanction of the Commissioner, may attach the estate, and may take it under his own management or may let it in farm.

(2) During the continuance of such attachment, the settlement-holder shall be excluded from possession of the land attached, and the Deputy Commissioner or the person to whom it is let in farm by the Deputy Commissioner shall have all the rights of the settlement-holder to manage the estate, and to realise the rents and profits arising therefrom.

(3) The surplus profits of the estate, after defraying the costs of attachment and of collection, shall be applied, first, to the payment of any revenue becoming due in respect of such estate during the attachment, and, next, to discharging the arrear for the recovery of which the attachment was made.

(4) The attachment shall continue until the arrear is paid or realised from the profits of the estate attached, or the Deputy Commissioner reinstates the settlement-holder in possession :

Provided that, without the sanction of the State Government, no attachment shall continue for a longer period than five years.

69. B. (1) When an arrear has accrued in respect of any estate pertaining to a religious institution, the Deputy

Commissioner after consultation with the Managing Committee of the religious institution, if there be any, may with the previous sanction of the Commissioner, attach such estate and may take it under his own management or may let it out in farm.

(2) Whenever the Deputy Commissioner attaches under sub-section (1) an estate pertaining to a religious institution to which another estate or other estates in the same district pertain, the Deputy Commissioner, may with the previous sanction of the State Government also attach such other estate or some or all of such other estates and take it or them under his own management or let it or them out in farm.

(3) During the continuance of an attachment under sub-section (1) or (2), the settlement-holder, or when an estate is lakheraj or revenue-free, the lakherajdar or proprietor, as the case may be, shall be, excluded from possession of the land attached ; and the Deputy Commissioner or the person to whom it is let in farm by the Deputy Commissioner shall have all the rights of the settlement holder, lakherajdar or proprietor, as the case may be, to manage the estate or estates and to realise the rents and profits arising therefrom.

(4) (i) The income of every estate attached under sub-section (1) or (2) shall be applied as follows :—

Firstly, to the defraying of the costs of attachment, management and collection in respect of all the estates so attached ;

Secondly, to the payment of all sums lawfully due to the Government on account of revenue or otherwise in respect of any of the estates under attachment ; and

Thirdly, to the discharge of the arrear for the recovery of which the attachment was made.

(ii) Should any surplus remain after the appropriations as aforesaid, it shall be paid to the person conducting the daily worship or prayer at the institution concerned on his furnishing such security as the Deputy Commissioner may require.

(5) (i) Save as provided in clauses (ii) and (iii) of this sub-section, every attachment under sub-section (1) or (2) shall continue until the arrears in respect of all the estates so attached are fully realised or paid.

(ii) When an estate is released from attachment, the Deputy Commissioner shall forthwith reinstate the settlement holder, lakherajdar or proprietor, as the case may be, in possession :

Provided that if the Deputy Commissioner is not satisfied that the future management of any such estate or estates would be such as would adequately ensure the punctual payment of future dues to Government in respect of such estate or estates, he may, with the previous sanction of the State Government maintain the attachment of such estate or estates in force until he is so satisfied.

(iii) No attachment shall continue for a period longer than two years without the previous sanction of the State Government.

SALE OF DEFAULTING ESTATE

70. When an arrear has accrued in respect of a permanently-settled estate or of an estate in which the settlement-holder has a permanent, heritable and transferable right of use and occupancy, the Deputy Commissioner may sell the estate by auction :

When estate may be sold.

Provided that—

- (1) except when the State Government by general order applicable to any local area or any class of cases, or by special order, otherwise direct, an estate which is not permanently-settled shall not be sold unless the Deputy Commissioner is of opinion that the process provided for in section 69 is not sufficient for the recovery of the arrear :
- (2) if the arrear has accrued on a separate account opened under Section 65, only the shares or lands comprised in that account shall in the first place be put up to sale ; and, if the highest bid does not cover the arrear, the Deputy Commissioner shall stop the sale, and direct that the entire estate shall be put up for sale at a future date, to be specified by him ; and the entire estate shall be put up accordingly and sold ;
- (3) no property shall be sold under this section—
 - (a) for any arrear which may have become due in respect thereof while it was under the management of the Court of Wards, or was so

circumstanced that the Court of Wards might have exercised jurisdiction over it under the law for the time being in force ; or

(b) for any arrear which may have become due while it was under attachment by order of a revenue authority.

Note :—(1) In the temporarily-settled estates, sale must not be resorted to as a general measure without the previous sanction of the State Government which can only be given when it is clearly shown that the realisation of the arrears by the ordinary process is likely to be more than usually difficult.

Note :—(2) Officers holding revenue sales of temporarily-settled estates are required to ignore the bids of those who are not *bonafide* cultivators such as Marwaris and oders.

Note :—(3) Ministerial or menial officers are not allowed to have anything to do with the sale of purchase of defaulting estates otherwise than to the extent necessary for the performance of their duties as officers of Government.

Note :—(4) No *mauzadar* shall, without the permission of the Deputy Commissioner or Subdivisional Officer, bid for or purchase land sold at his instance for arrears of revenue in his *mauza*.

Rulings :—(1) A person who had no interest in an estate was in adverse possession of lands really included in the estate which was sold under section 70 of the Assam Land and Revenue Regulation ; he claimed those lands as situated within a neighbouring estate owned by him ; his adverse possession had not, at the time of sale, continued for the statutory period so as to ripen into ownership :

Held, that he was not a defaulting proprietor at the date of the sale and as he was a stranger to the proceedings for delivery of possession, the symbolical delivery could not avail against him (*Jitendra Kumar Pal Choudhury versus Mohendra Chandra Sarma and others*,—24 C.L.J. 53 (1914)).

(2) On a sale held under section 70 of the Assam Land and Revenue Regulation on account of an arrear, a person who has acquired a good title by adverse possession against the original proprietor at the time of sale, is a defaulter and cannot assert a good title as against the purchaser, an unrecorded proprietor of the estate.

What is sold is the estate and the purchaser is entitled to take that estate as against the defaulting proprietors. (*After Ali and others versus Brojendra Kishore Roy Choudhury*,—24 C.L.J. 60 (1914)).

(3) Where persons had acquired, by adverse possession, the proprietary interest in a part of an estate and had allowed the revenue to fall into arrear for which it had to be sold under the Assam Land and Revenue Regulation they were defaulters by reason of section 67 read with section 63 and not mere incumbrances. The fact that they claimed to possess the land as part of a different estate was immaterial. (*Mahim Chandra Choudhury versus Pyari Lal Das*,—I.L.R. 44, Cal : 412 (1961)).

(4) A purchaser at a sale for arrears of revenue under section 70 of the Assam Land and Revenue Regulation is entitled to sue the de-

faulting proprietors for recovery of possession within twelve years from the date of delivery of symbolical possession to him.

Such a purchaser may be one of the defaulting proprietors and he will have the same rights ; except, however, in a possible case when the default and the sale are found to have been fraudulently procured by him where by his very right of suing to recover possession from his previous co-owners is affected.

The article of the Limitation Act applying to such suits is not Art. 121 but 142 or 144. (*Balkuntha Nath Das versus Sheik Azidulla and others*,—C. W. N. 778 (1928).)

71. Property sold under Section 70 shall be sold free of all incumbrances previously created thereon by any other person than the purchaser :

Provided that—

first, nothing in this section shall apply—

(a) in a permanently-settled estate,—

(1) to tenures which have been held from the time of the Permanent Settlement, or

(2) to tenures held immediately of the proprietors which have been created since the Permanent Settlement and which have been registered under Chapter IV ;

(b) in any estate, to tenures created *bona-fide* and at a rent not less than the full amount of the revenue fairly payable in respect of the land ;

secondly, nothing in this section shall entitle a purchaser to reject any tenant having a right of occupancy under the Rent Law for the time being in force, or to enhance the rent of any such tenant otherwise than in the manner prescribed by that law ;

thirdly, nothing in this section shall apply when the purchaser is a recorded or unrecorded proprietor or settlement-holder of the estate.

fourthly, nothing in this section shall apply to encumbrances created in favour of State Government in any estate.

72. (1) If the Deputy Commissioner proceeds to sell any property under Section 70, he shall prepare a statement in manner prescribed, specifying the property which will be sold, the time and place of sale, the revenue assessed on the property and any other particulars which he may think necessary.

(2) A list of all estates for which a statement has been prepared under sub-section (1) shall be published in manner prescribed, and the copy of the statement relating to every

Estate to be sold
free of incum-
brances.

Notice of sale.

such estate shall be open to inspection by the public free of charge in manner prescribed.

(3) If the revenue of any estate for which a statement has been prepared under sub-section (1) exceeds five hundred rupees, a copy of the statement shall be published in the official Gazette.

Note—Sales for arrears need not be published in the Gazette unless the revenue of the share to be sold for arrears exceeds Rs. 500; the total revenue paid by the estate is immaterial.

(4) When the arrear has accrued on an estate, not being a permanently-settled estate in the district of Cachar a copy of the statement prepared under sub-section (1) shall be served on the defaulter, or if he cannot be found, posted on the estate in manner prescribed.

(5) When the arrear has accrued on a permanently-settled estate in the district of Cachar a copy of the statement shall be posted on, or in the vicinity of, the estate in manner prescribed and, if any proprietor of the estate has registered his name and address in the manner prescribed, a copy of the notice shall be despatched to him by post in a registered cover to that address.

(6) In making rules prescribing the manner of registering names and addresses for the purpose of sub-section (5), the State Government may impose a fee for such registration and may fix a period after which such registration will, unless renewed, become void.

Note—For details of procedure to be followed, the rules framed under Chapter V should be referred to.

73. When any property is notified for sale under Section 72, the Deputy Commissioner may publish a proclamation forbidding the tenants of the defaulter to pay to the defaulter any rent which has fallen due since the arrear accrued, on pain of not being entitled to credit in their accounts with the purchaser for any sum so paid.

Proclamation to
tenants of defaul-
ter.

74. (1) Every sale under this Chapter shall be made either by the Deputy Commissioner in person, or by an officer specially empowered by the State Government in this behalf.

Sale by whom
and when to be
made.

(2) No such sale shall take place on a Sunday or other authorised holiday, or until after the expiration of at least thirty days from the date on which the list of estate has been published under section 72.

Note—The date of sale should be so fixed that the day preceding the sale is an open day and not a gazetted holiday.

(3) The Deputy Commissioner may, from time to time, postpone the sale and every postponement of sale of a permanently-settled estate shall be reported to the Commissioner or (where there is no Commissioner) to the State Government.

When sale may be stayed,

75. If the defaulter pays the arrear of revenue in respect of which the property is to be sold, and the fee (if any) prescribed in this behalf, at any time before the day fixed for the sale, the sale shall be stayed.

Note :—For the fee prescribed under this section see rules 165 and 169.

Right of co-proprietors to purchase share or land sold on separate account.

76. Where the arrear has accrued on a separate account opened under section 65, and a sale of the entire estate has been directed under section 70, proviso (2), any proprietor of the estate who is not comprised in the separate account may, within ten days from the time at which the direction is given, purchase the share or lands comprised in the separate account by paying the amount of the arrear, and the provision of section 71 shall, notwithstanding the third proviso thereto, apply to such a purchase.

Deposit by purchaser.

77. The person declared to be the purchaser at an auction-sale under the foregoing sections shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

Payment of balance of purchase-money and consequences of default.

78. (1) The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day from date on which the auction-sale took place, or, if that day is a Sunday or other authorized holiday, then on the next following office day.

(2) In default of payment within that period, the deposit, after defraying thereout the expenses of the sale, shall be forfeited to the Government, the property shall be resold, and the defaulting purchaser shall forfeit all claim to the property, or to any part of the sum for which it may be subsequently sold :

Provided that no re-sale under this section shall be made unless and until a fresh notice has been issued in the manner prescribed for the original sale.

(3) If the proceeds of the sale which is eventually made are less than the price bid by the defaulting purchaser, the difference shall be leviable from him under the provisions of this Chapter as if it were an arrear.

Provided that the provisions of this section shall not apply to any case in which the sale has been set aside under Section 78 A before the full amount of purchase-money falls due under sub-section (1) of this section.

78 A. (1) Where an estate has been sold under Section 70 or 76 any person may apply at or before noon on the sixtieth day from the date of sale, reckoning the said day of sale as the first of the said sixty-days to have the sale set aside on depositing in the Deputy Commissioner's Court—

Application to set aside sale on depositing percentage of purchase-money.

- (a) for disposal as directed in sub-section (2) a sum equal to five per cent of the purchase-money up to Rs. 1,000 and to three per cent on the excess over Rs. 1,000: provided that such sum shall not be less than one rupee; and
- (b) for payment to the State Government, the amount specified in the proclamation of sale as that for recovery of which the sale was ordered together with the expenses of the sale.

(2) If deposit and application be made as aforesaid, the Deputy Commissioner shall set aside the sale and shall cause to be repaid to the purchaser the purchase-money so far as it has been deposited together with the deposit made under sub-section (1) (a), unless the former has been forfeited to the Government under sub-section (2) of Section 78, in which case the latter sum shall also be forfeited to the Government.

Note :—Nothing in this section shall be deemed to create in favour of the person making such deposit any title or right to such estate or part of estate merely by virtue of the fact that he has made such deposit or that the sale has been set aside at his instance.

Explanation—The word 'estate' in this section includes a separate account opened under section 65.

79. At any time within sixty days from the date of the sale, application in writing may be made to the Deputy Commissioner, to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it:

Application to set aside sale on ground of mistake or irregularity.

Provided that no sale shall be set aside on this ground unless the applicant proves to the satisfaction of the Deputy Commissioner, that he has sustained substantial injury by reason of the irregularity or mistake complained of:

Provided also that the non-delivery or mis-delivery of registered cover despatched under section 72, sub-section (b), shall not, for the purposes of this section, be deemed an irregularity or mistake in publishing or conducting the sale.

Sale when final.

80. (1) A sale on which the purchase-money has been paid as directed in section 78, and against which no application under section 78 A or 79 has been preferred, shall subject to the provision of sections 81 and 82, be final at noon of the sixtieth day from the day of sale, reckoning the said day of sale as the first of the said sixty days.

(2) A sale against which such an application has been preferred and has been dismissed by the Deputy Commissioner shall, subject as aforesaid, be final from the date of the dismissal, if more than sixty days from day of sale, or if less, then at noon of the sixtieth day as above provided.

Annulment of sale on ground of hardship.

81. The Board may, on application made to them at any time within one year of a sale becoming final under section 80, set the sale aside on the ground of hardship or injustice.

Annulment of sale by Civil Court.

82. (1) A sale for arrears of revenue shall not be annulled by a Civil Court, except on the ground of its having been made contrary to the provisions of this Regulation, and on proof that the plaintiff has sustained substantial injury by reason of the neglect of those provisions.

(2) A suit to annul such a sale shall not be entertained upon any ground, unless that ground has been specified in an application made to the Deputy Commissioner under section 79, or unless it is instituted within one year from the date of sale becoming final under section 80.

(3) No person shall be entitled to contest the legality of a sale after having received any portion of the purchase-money.

Saving of right to sue for damages.

83. Nothing in the foregoing sections shall be construed to debar any person, considering himself wronged by any act or omission connected with a sale under this Regulation, from his remedy in a suit for damages against the person by whose act or omission he considers himself to have been wronged.

Re-payment of purchase money when sale is set aside.

84. Whenever the sale of any estate is set aside except under section 78 A, the purchaser shall be entitled to receive back from the State Government his purchase-money, except the surplus thereof (if any) paid away under the last clause of section 87, with or without interest, at such rate, not exceeding six per centum per annum, as the State Government think fit.

85. (1) After a sale has become final, the Deputy Commissioner shall put the purchaser into possession of the

property sold, and shall grant him a certificate to the effect that he has purchased the property to which the certificate refers.

(2) The certificate shall bear the date on which the sale became final under section 80 and the title to the property sold shall vest in the purchaser from the date of the certificate and not before

(3) A certificate granted to a purchaser under this section shall be conclusive evidence in his favour, and in favour of any person claiming under him, that every publication, serving, posting or despatch of any statement, list notice or letter required by this Regulation, or the rules made under it, to be published, served, posted or despatched has been duly effected, and the title of any person who has obtained any such certificate or of any person claiming under him, shall not be impeached or affected under section 82 or otherwise by reason of any omission, informality or irregularity as regards the publication, serving, posting or despatching of any statement, list, notice or letter in the proceedings under which the sale was held at which the property was purchased.

Provided that nothing in this sub-section shall effect the power conferred on the Board by section 81

86. The name of the purchaser to be entered in the certificate shall be that of the person declared at the time of sale to be the actual purchaser, and any suit brought in a Civil Court against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs

87. When a sale has become final under section 80, the proceeds of the sale shall be applied—

first, to defraying the expenses of the sale,

secondly, to the payment of the arrear due,

thirdly, to the payment of any other arrear due by the same defaulter,

and the surplus, if any, shall be paid to the person whose property has been sold, and shall not, except under an order of a Civil Court, be payable to any creditor of that person.

88. The person named in the certificate of title as purchaser shall be liable for all instalments of land revenue becoming due in respect of the property purchased subsequently to the accrual of the arrear for the recovery of which

On sale becoming final purchaser to be put in possession.

Bar of suit against certified purchaser

Application of proceeds of sale

Liability of purchaser for revenue.

the property was sold.

Right of pre-emption.

89. When an estate held by settlement-holders situate in any local area to which the State Government may, by notification, apply this section, is sold under section 70, any recorded settlement-holders of the estate, not being himself in arrear with regard to the revenue which, as between him and the other settlement-holders, is payable by him, may, if the lot has been knocked down to a stranger, claim to take the property at the sum last bid :

Provided that the claim is made on the day of sale, and before the officer conducting the sale has left the office for the day, and that the claimant fulfils all the other conditions of the sale.

Note—The provisions of this section have been extended to all the plains districts.

ANNULMENT OF SETTLEMENT

Annulment of settlement.

90. (1) Where the estate in respect of which the arrear has accrued is not a permanently-settled estate, and is situate in any local area to which the State Government may, by notification, apply this section, if the process provided for in section 69 is not sufficient for the recovery of the arrear, the Deputy Commissioner may, by proclamation published in the prescribed manner, annul the existing settlement of the estate and relinquish the claim of the Government to the arrear :

Provided that—

(a) if the arrear is in respect of an estate in which the settlement-holder has a permanent, heritable and transferable right of use and occupancy, the Deputy Commissioner shall not, unless the State Government otherwise, by rule, direct, annul the settlement without the sanction of the State Government ;

(b) this sanction shall not apply to the recovery of any arrear which may have accrued on an estate—

(1) while it was under the management of the Court of Wards or was so circumstanced that the Court of Wards might have exercised jurisdiction over it under the law for the time being in force ; or

(2) while it was under attachment by order of a revenue authority.

(2) Upon the publication of a proclamation under this section, all encumbrances, other than the tenures mentioned in section 71, proviso *first clause (b)*, affecting the estate, or any portion thereof, shall become void, and the Deputy Commissioner may eject the settlement-holder from possession and may enter upon and manage the estate and receive all rents and profits accruing therefrom, or may dispose of the estate, in accordance with the rules issued by the State Government under section 12.

Note:—(1) The provisions of section 90 have been extended to all the districts in which the Regulation generally is in force.

(2) Deputy Commissioners have power to annul for arrears the settlement of estate in which the settlement-holders have not a permanent, heritable and transferable right of use and occupancy. The annulment of settlement of an estate carries with it the remission of the arrear due thereon, and it is not necessary to apply for separate sanction to the remission.

(3) Deputy Commissioners are empowered to remit process fees in all cases in which the original demand is remitted or the process has been issued by mistake.

(4) An order formally annulling settlement should invariably be recorded when arrears due on annual pattas other than in *faul ferar* cases are remitted by Deputy Commissioner. Deputy Commissioners should submit to the Commissioner a quarterly return in Form No. 103 showing the number of annual estates in each subdivision the settlement of which has been annulled during the quarter under section 90 of the Regulation and the amount of revenue remitted thereon.

(5) When under this section possession of an estate has been taken on behalf of the Government, the Deputy Commissioner may, if immediate eviction would cause undue hardship, allow the former tenants or members of his family to continue to reside in the homestead free of rent, or subject to such rent as he may think fit, for the period of one year and may, for special reasons, extend the terms for such residence from year to year. Details of all cases of this nature shall be entered in a register to be kept in the Deputy Commissioner's office.

(6) See also rule 150 under Chapter V. To provide for the treatment of contumacious defaulters the following executive instructions were issued:—

(i) No land, the settlement of which has been annulled on account of arrears, will be resettled with the defaulter or with any member of a joint family to which the defaulter belongs, without the special sanction of the Deputy Commissioner or Subdivisional Officer. Such sanction will not be given unless and until the arrears on account of which the settlement has been annulled have been first paid, with all costs of proceedings taken for their realisation.

(ii) Every *mandal* will visit at least once a year every field in his circle the settlement of which has been annulled under section 90 and will submit a special report to the *mauzadar* in every case in which he finds that a defaulter has re-occupied land from which he has been ejected, without paying the arrears and obtaining settlement. It will also be the duty of the *gaonburos* to report to the *mauzadar* any such

cases which may come to their notice, and the *mauzadar* will report them to the Deputy Commissioner or Subdivisional Officer for orders.

(iii) In resettling lands, the settlement of which has been annulled on account of arrears, preference will be given to an applicant who tenders payment of the arrears and costs. Such land will not, during the agricultural year in which settlement is annulled, be settled with any person without payment of the arrears and costs, otherwise than on annual lease.

SALE OF IMMOVEABLE PROPERTY OTHER THAN THE DEFAULTING ESTATE

*Power to proceed
against defaul-
ter's other immo-
veable property.*

91. (1) If an arrear of an estate in which the settlement-holder has not a permanent, heritable and transferable right of use and occupancy, cannot be recovered by the processes mentioned in S. 69, and an arrear in respect of any other estate cannot be recovered by the processes mentioned in this chapter; and the defaulter is in possession of any immoveable property, other than the estate in respect of which the arrear has accrued, the Deputy Commissioner may proceed against any of that other property situated within his district according to the law for the time being in force for the attachment and sale of immoveable property under the decree of a Civil Court.

(2) If there is no such other property in his district, the Deputy Commissioner may make under his hand a certificate in the prescribed form, of the amount of the arrear remaining unpaid, and may forward the same to the Deputy Commissioner of any other district in which this Regulation is in force, and within the limits of which the defaulter is possessed of any such property, and that the Deputy Commissioner shall thereupon proceed to realise the arrear as if it were an arrear accruing in his own district.

Note 1.—This section must be carefully distinguished from section 70. When an estate is sold for its own arrears, section 70 applies; when an estate is sold for arrear not its own, section 91 applies. The sale procedure and the legal effects of the sale are different in the two cases.

When a *mauzadar* defaults and the estate pledged by his surety is sold in consequence under the Regulation, the sale, being of an estate for arrears other than its own, is governed by the provisions of section 91. Accordingly, the sale rules in Order 21 of the Civil Procedure Code must be observed. In particular, as laid down in rule 79 of the aforesaid order, no officer or other person having any duty to perform in connection with the sale should, either directly or indirectly, bid for the property. The officer conducting the sale should not, therefore, attempt to buy in the property for Government even in the absence of bids from others. Some persons not coming within the

prohibition contained in the rule cited may, however, with the permission of the officer conducting the sale, bid for and purchase the property on behalf of Government in any case where such a course is considered necessary or desirable.

(2) Note 2.—The expression in sub-clause (1) 'the law for the time being in force for the attachment and sale of immoveable property under the decree of a Civil Court', includes the procedure laid down in the Civil Procedure Code not only for the actual conduct of such attachment and sale, but also for the determination of claims and objections arising out of such sales and for setting them aside. In other words this section confers jurisdiction on the Deputy Commissioner to hear and determine claims and objections arising out of sale of immoveable property held under this section and applications to set aside such sales, in accordance with Order XXI of the Code of Civil Procedure.

SUPPLEMENTAL

92. The costs of serving any notice, proclamation or other process under this Chapter shall be recoverable as part of the arrear in respect of which such process was issued.

93. Arrears of land-revenue due at the commencement of this Regulation shall be recoverable as nearly as may be, according to the provisions of this Chapter.

Recovery of existing arrears.

94. The provisions of this chapter shall, so far as may be, apply to the recovery of any sum of money realisable under any enactment for the time being in force as if it were an arrear of land-revenue.

Recovery of other money.

95. The State Government may, from time to time make rules, not inconsistent with this Regulation, to provide for the proper performance of all things to be done, and for the regulation of all proceedings to be taken, under this Chapter.

Power of State Government to make rules.

Note:—For the rules framed under this Chapter, see Rules 130-170.

NOTES :

CHAPTER V

(Ss. 63-95.)

Arrears And Mode Of Recovering Them.

This chapter lays down the procedure to be followed in recovering the arrears of land-revenue. It also provides the procedure for setting aside the sale of a defaulting estate. This chapter may be discussed under the following heads :

- (A) Liability for revenue and default (Ss. 63-87).
- (B) Modes of recovering arrears of revenue (Ss. 68-78,91).
- (C) Procedures for setting aside the sale of a defaulting estate sold for recovery of arrears of revenue (Ss. 78A; 79,81 and 82).
- (D) Finality of sale, granting of sale certificate and delivery of possession of the estate to the auction purchaser (Ss 80-85)
- (E) Disposal of sale proceeds (S. 87).
- (F) Annulment of settlement and its effects. (S 90)

1 Liability for revenue and default (Ss. 63-64, 66-67):

All persons in possession of an estate or any part of it during any portion of the agricultural year are liable to pay the revenue of the estate due for the year. The liability to pay the revenue is joint and several, which means that there is an individual and collective responsibility for the payment of the revenue. The revenue of the entire estate is thus realisable from all or any of the persons in possession of the estate. Similarly the liability to pay the hoe-tax or house-tax, which is imposed in lieu of land-revenue, is joint and several, and the tax is realisable from all male persons above the age of eighteen years who took part in the cultivation of the land or any part of it at any time during the year of assessment.

If the revenue is not paid on the date when it falls due, it is deemed to be an arrear ; and the persons liable to pay it are treated as defaulters. The due dates for payment of the land-revenue are different for different areas, and are specified in Rule 130 framed under Chapter V.

2. Opening of separate accounts in the case of permanently-settled estates (S 65) :

When there are several recorded proprietors of a permanently-settled estate, any one of them desiring to pay his share of revenue separately in respect of his share of the

estate or the particular lands separately held by him may submit a written application to that effect to the Deputy Commissioner. The Deputy Commissioner, after proper notice and enquiry, may order for opening of separate accounts, and the payments made will be credited separately in the separate accounts. Opening of separate accounts will not, however, affect the joint and several liability for the revenue of the entire estate except as provided in section 70.

3. Modes of recovering the arrear revenue (Ss. 68-78,91):

When revenue has fallen in arrear the Deputy Commissioner may proceed to recover the arrear by resorting to any of the following measures

- (i) by issuing a notice of demand (S. 68) ;
- (ii) by attachment and sale of the movable properties of the defaulter (S. 69) ;
- (iii) by attachment of the defaulting estate and applying the profits of the estate towards discharging the arrear (Ss. 69 A-69 B) ;
- (iv) by sale of the defaulting estate (S. 70) ; and
- (v) by sale of the immovable properties of the defaulter other than the defaulting estate (S. 91) :

(i) Notice of demand (S. 68) :

Before resorting to other measures for the realisation of the arrear, a notice of demand may be issued calling on the defaulter to pay the amount within a time specified in the notice. This notice of demand is not required in the case of permanently-settled estates. When, however, the arrear is in respect of a temporarily-settled estate, the prescribed officer (prescribed by Rule 133) may at his discretion issue such demand notice on the defaulter requiring him to pay the arrear within a specified time. The issue of such demand notice is not obligatory unless declared to be so by the State Government. The notice of demand has now been dispensed with.

(ii) Attachment and sale of movable properties of the defaulter (S. 69) :

This mode of recovering the arrear is applicable to both temporarily-settled estates and permanently-settled estates.

For the recovery of arrear revenue, the Deputy Commissioner may order for attachment and sale of so much of the defaulter's movable property as will cover the arrear. But certain movable properties are expressly exempted from attachment and sale.

What steps the Deputy Commissioner may take for the recovery of "revenue ? (G. U. '69) What is the procedure for recovery of arrear of land revenue under the Regulation ? (G.U. '72, '81) Narrate the procedure of realizing arrears of revenue from a defaulter. (D.U. '68,)

These are :

- (a) necessary wearing apparel,
- (b) implements of husbandry,
- (c) tools of artisans,
- (d) materials of houses and other buildings belonging to and occupied by agriculturists, and
- (e) such cattle and seed-grains of the defaulter as may be necessary to earn his livelihood as an agriculturist.

The procedure for attachment and sale of movable properties of the defaulter is the same as is provided in the Civil Procedure Code for attachment and sale of movable properties in execution of a decree of a Civil Court, with such modifications as are provided in the rules.

(Rules for recovering arrears have been framed under Chapter V. Under Rule 153 the Deputy Commissioner or Sub-divisional Officer, after getting the list of defaulters from the *Mauzadar* will issue an order to the *Nazir* to attach such movable properties of the defaulter as may be pointed out by the *Mauzadar*. After attachment the *Nazir* submits the list of the properties so attached to the Deputy Commissioner or Sub-divisional Officer. At the time of attachment the *Nazir* also serves a sale notice on the defaulter. If after attachment the defaulter still fails to pay the arrear with costs, the Deputy Commissioner or the Subdivisional Officer will issue an order to the *Nazir* to sell the properties attached, if the arrear is not paid before the date fixed for sale.

(iii) Attachment of the defaulting estate and application of the surplus profits (Ss. 69A-69B) :

This mode of recovering the arrear revenue is applicable to temporarily-settled estates only. When the arrear is in respect of a temporarily-settled estate, the Deputy Commissioner may, with the previous sanction of the Commissioner, attach the estate, and take it under his own management or let it in farm. The settlement-holder is then excluded from possession of the estate, and the Deputy Commissioner or the person to whom it is let in farm, collects the rents and profits of the estate. After meeting the costs of attachment and of collection, the surplus profits of the estate are applied, first to the payment of the revenue due for the period of attachment, and then towards payment of the arrear for the recovery of which the attachment was made. The attachment continues until :

- (a) the settlement-holder pays the arrear, or
- (b) the arrear is realised from the profits of the estate, or
- (c) the Deputy Commissioner reinstates the settlement-holder in possession.

The attachment, however, cannot continue for a period more than five years without the sanction of the State Government.

Similar provisions have been made in S. 69B for recovery of arrear which accrued in respect of any estate belonging to a religious institution. In this case the Deputy Commissioner may, after consultation with the Managing Committee, if any, of the religious institution, and with the previous sanction of the Commissioner, attach such estate, and may take it under his own management or let it out in farm. The Deputy Commissioner with the previous sanction of the State Government, may also attach other estates of such institution in the district and bring them under his own management or let them out in farm. The income of the estate, after defraying the costs of attachment, management and the collection charge, is applied, first, towards payment of all such dues to the Government on account of revenue or otherwise in respect of any of the estates under attachment, and then towards discharging the arrear for the recovery of which the attachment was made. The attachment continues until the arrears in respect of the estates are fully realised or paid. The Deputy Commissioner may, however, maintain the attachment with the previous sanction of the State Government, if he is satisfied that future management of the estates will not ensure punctual payment of future dues of the Government. The attachment in this case cannot continue for more than two years without the previous sanction of the State Government.

(iv) Sale of the defaulting estate (Ss. 70-78) :

(A) Estates that may be sold :

(A). The arrears of revenue can be recovered by sale of the defaulting estate also. The sale is permissible only in respect of two classes of defaulting estates :

When may an
estate be sold ?
(G.U. '69)-

(a) permanently-settled estate, and

(b) the estate in which the settlement-holder has a permanent, heritable and transferable right of use and occupancy, i e , the estate of the land-holder.

In the case of temporarily-settled estates of the land-holder, the sale of the defaulting estate can be resorted to only when the Deputy Commissioner is of opinion that the recovery of the arrear is not possible by the processes provided for in section 69, i e , by attachment and sale of the movable properties of the defaulter. The State Government

may, however, by general or special order authorise sale of such estate without first making an attempt to recover the arrear by sale of the movable properties of the defaulter. The permanently-settled estate can be put to sale immediately when the arrear has accrued without resorting to the processes provided for in section 69. In the case of permanently-settled estate, when separate accounts have been opened under section 65 and an arrear has accrued in respect of the separate account, the shares or the lands comprised in such account are first put to sale. In case the highest bid does not cover the arrear, the entire estate is put to sale on a future date to be fixed by the Deputy Commissioner.

[An estate held under an Annual Patta cannot be sold for its arrear as the settlement-holder of such an estate has no permanent, heritable and transferable right of use and occupancy in the land.]

(B) When sale is not permissible :

Sale of an estate for recovery of arrears of revenue is not permissible :

- (1) when the arrear accrued during the period it was under the management of the Court of Wards : and
- (2) when the arrear became due while it was under attachment by order of a revenue authority.

(C) Estate to be sold free of Incumbrances (S. 71) :

Incumbrance, which means a burden attached to an estate, is an interest which may be created by mortgage, lease etc. or other rights and interests in the property created by the owner. It includes not merely such interests as have been directly created by the owner, but also interests (such as rights acquired by adverse possession) which have been allowed to grow up by his sufferance or negligence. An incumbrance implies a limitation of the rights in the property.

When an estate is sold for its own arrear, it is sold free from all incumbrances created previously by a person other than the purchaser himself. But exceptions have been made in case of certain incumbrances which cannot be avoided. The interests thus protected are :

- (1) in the case of permanently-settled estate, tenures like the *zakukdar* or other similar tenures held from the time of the Permanent Settlement, and also tenures created since the Permanent Settlement and registered under section

55 of the Regulation :

(2) in case of any estate, the tenures created bona fide at a rent not less than the full amount of the revenue fairly payable in respect of it ;

(3) the rights of an occupancy tenant. A tenant acquiring a right of occupancy cannot be ejected, nor the rent of any such tenant can be enhanced except under the provisions of the Tenancy Acts :

(4) incumbrances created in favour of the Government in any estate ;

(5) the sale will not be free of incumbrances if the auction purchaser is himself a proprietor or settlement-holder of the estate. .

(D) Procedure for sale of the defaulting estate (Ss, 72-78) :

The sale of a defaulting estate is to be preceded by a notice of sale. When the Deputy Commissioner proceeds to sell the defaulting estate, he is required in the first place to prepare a statement, called a sale statement, for the estate to be sold, and also a list of estates for which the statements have been prepared. The sale statement shall contain the following particulars :

- (1) particulars of the property to be sold,
- (2) the time and place of sale,
- (3) the revenue of the estate, and
- (4) any other particulars the Deputy Commissioner may think necessary.

The sale statement so prepared is to be served :

- (1) on the defaulter, or, if he cannot be found, it is to be posted in some conspicuous place of the estate (Rule 136 A), and
- (2) in the case of an estate for which revenue exceeds Rs. 500/-, a copy of the statement to be published in the official Gazette.

The list of all estates, for which a statement is prepared, is to be published in the following places (as provided in Rule 136) :

- (1) in the Court of the Revenue Officer by whom it has been prepared ;
- (2) at the office of the Sub-Deputy Collector in whose circle the estate is situated ;
- (3) at the office of the Tahsildar or house of the Mauzadar within whose tahsil or mouza the estate lies ;
- (4) on the signboard of the gaonbura within whose

State the procedure for sale of a defaulting estate for arrear of land revenue

(G.U. '79)

charge the defaulting estate falls, and

(5) at the office of the Gaon Panchayat and the Anchalik Panchayat.

(For Assam Valley districts one combined Form No. 38 is prescribed under Section 72 for both the statement and the list of estates advertised for sale. See Assam Land Revenue Manual Vol II.)

After publication of the sale statement and the list of estates, the estate is put to sale on the day notified for sale, if before that date the defaulter fails to pay the arrear. The sale cannot be held before expiry of thirty days from the date of publication of the list of estates, or on a Sunday or other authorised holiday. The sale is to be made either by the Deputy Commissioner, or by an officer specially empowered by the State Government. The sale may also be postponed from time to time by the Deputy Commissioner, but postponement of sale of a permanently-settled estate is to be reported to the Commissioner. The defaulter can pay the arrear together with the fee, or penalty (that may be fixed under Rules 165 and 169) before the date of the sale. In that case the sale will be stayed.

(The originals or copies of all statements prepared under section 72 (1) are open to inspection by the public, free of charge, daily at the office where the statements were prepared during specified hours (Rule 137).)

(E) Deposit of purchase-money (77-78)

The purchaser at the auction sale is required to deposit immediately twenty-five per cent of the amount of his bid, and in default the estate is immediately again put to sale. The auction purchaser has to pay the balance of the purchase-money on or before the fifteenth day of the sale. On default of payment of the balance within this period, the estate will be re-sold, and the deposited amount, after defraying the expenses of the sale, is forfeited to the Government. The re-sale of the estate can be made only after publishing fresh sale notices in the manner prescribed for the original sale. If in the re-sale the price fetched is less than the price bid by the previous defaulting purchaser, the difference is realisable from him as if it were an arrear of land-revenue.

(V) Sale of immovable property of the defaulter other than the defaulting estate (S. 91) :

The arrear due in respect of an estate can be realised by attachment and sale of other immovable properties of the defaulter. In this case the estate to be sold is not itself in default. Section 91 empowers the Deputy Commissioner

Under what circumstances can an estate be sold for arrears of revenue not its own.

(G. U. '78)

to recover the arrears by attachment and sale of defaulter's other immovable property in regard to which there is no default. Before resorting to this measure it is essential that the Deputy Commissioner has made a prior attempt to realise the arrears by applying the processes provided for in sections 69, 69 A and 70 in so far as they are applicable. Thus recovery of the arrear by sale of other immovable property (not itself in arrear) of the defaulter under this provision is not permissible unless the Deputy Commissioner has made prior attempts to realise the arrear :

(1) by attachment and sale of the movable properties of the defaulter (S. 69) in the case where the arrear accrued in respect of an estate over which the settlement-holder has no permanent, heritable and transferable rights of use and occupancy (e. g . when the arrear is in respect of an estate held under an Annual Patta) :

(2) by attachment and sale of movable properties of the defaulter (S. 69), by attachment of the defaulting estate and applying the profits towards discharging the arrear (S. 69A) and by sale of the defaulting estate (S. 70) in the case where the arrear accrued in respect of the estate held under a periodic patta (i. e., the estate of the land-holder), and

(3) by sale of the movables of the defaulter (S. 69) and by sale of the defaulting estate (S. 70) in the case where the arrear is in respect of a permanently-settled estate.

When the arrear cannot be so recovered, the Deputy Commissioner may proceed against other immovable property of the defaulter situated within his district. In case the defaulter has no such other property in the same district, but has such property in another district, the Deputy Commissioner may forward a certificate stating the amount of the arrear to the Deputy Commissioner of the other district. The latter will then proceed against the immovable property of the defaulter as if the arrear had accrued within his district. The procedure which will govern the attachment and sale of such immovable property is the procedure provided in the Civil Procedure Code (Order XXI) for the attachment and sale of immovable property in execution of a decree of the Civil Court. This provision is also applicable for the recovery of other dues to the Government realisable under any enactment as an arrear of land-revenue (S. 94).

[The two sections 70 and 91 are distinguishable in that section 70 applies when the estate is sold for its own arrears, while section 91 governs the sale of an estate for arrears not its own. The procedures for holding the sales and the legal effects of the sales in the two cases are different. The procedures for setting aside the sales are also different.]

4. Procedures for setting aside the sale of a defaulting estate (Ss 78A, 79, 81 and 82) :

There are four different ways in which the sale of a defaulting estate may be set aside. These are :

(i) by an application to the Deputy Commissioner on depositing the arrear with costs and interests (S 78A);

(ii) by an application to the Deputy Commissioner on ground of material irregularity or mistake in publishing or conducting the sale resulting in substantial injury (S.79);

(iii) by an application to the Assam Board of Revenue on ground of hardship or injustice (S.81) ; and

(iv) by a suit in the Civil Court on the ground that the sale was made contrary to the provisions of the Regulation and that substantial injury was caused by reason of non-compliance of the provisions.

Applications to the Deputy Commissioner (Ss78A-79):

Applications to the Deputy Commissioner for setting aside the sale may be made under two circumstances:—

(i) Any person, within sixty days of the sale, can apply to the Deputy Commissioner for setting aside the sale on depositing the amount specified in the sale proclamation together with the expenses of the sale and an additional sum at 5 per cent of the purchase-money upto Rs.1,000, and 3 per cent on the amount above Rs. 1,000. When the deposit and the application are made the Deputy Commissioner shall set aside the sale, and order for refund of the purchase money along with the additional sum so deposited to the auction-purchaser (S. 78A).

(ii) An application to the Deputy Commissioner for setting aside the sale can also be made within sixty days of the sale on ground of material irregularity or mistake in publishing or conducting the sale which resulted in substantial injury to the applicant. A case of irregularity in sale arises when the procedure followed in putting up an estate for sale is not in conformity to the rules prescribed for regulating the sale. In this case the applicant has to prove to the satisfaction of the Deputy Commissioner that he has suffered

State the procedures for setting aside a sale of an estate for its own arrears.

(G.U. '74, '79)

Upon what grounds, by whom and by what procedure may a sale held under the Regulation be set aside?

(G.U. '69)

When can the sale be annulled?

(G.U. '69)

What are the remedies open to a defaulter for setting aside the sale of an estate for its arrear revenue?

(G.U. '65)

If a defaulting estate is sold for arrears of revenue what are the modes by which the person interested in the estate can get the sale set aside? Has the Civil Court jurisdiction to set aside the sale?

(G.U. ,62)

substantial injury be reason of the irregularity or mistake complained of (S. 79).

(iii) Application to the Assam Board of Revenue (S. 81):

Another remedy available to a person for setting aside the sale is by an application before the Assam Board of Revenue within one year of the sale becoming final on the ground of hardship or injustice. The revenue sale becomes final on the sixtieth day of the sale, or in the case where an application is made before the Deputy Commissioner for setting aside the sale and has been dismissed, the sale is deemed to be final from the date of dismissal, if the order of dismissal was passed beyond sixty days of the sale. The Assam Board of Revenue can set aside a sale where hardship or injustice has been caused. The relief granted under this section is more in the nature of an equitable relief. The Board's power under this section is wide enough, and it can set aside a sale on ground of hardship or injustice even though there has been no illegality or irregularity in holding the sale. The following may be considered as instances of injustice and hardship :

- (a) inadequacy of price at which the estate is sold.
- (b) holding a sale before expiry of thirty days of the publication of the sale notice,
- (c) where there has been no proper service of sale notice,
- (d) irregularity or mistake in publishing or conducting the sale,
- (e) collusion on the part of the co-sharers in bringing an estate to sale,
- (f) when holding of the sale is without jurisdiction.

(An application for setting aside the sale under section 81 of the Regulation is to be made within one year of the sale becoming final. The Board can, however, condone the delay and entertain such application if a petition under section 5 of the Indian Limitation Act. 1963 is made showing sufficient cause for not presenting the application to the Board within the prescribed period of one year.)

(iv) Annulment of sale by Civil Court (S. 82):

A revenue sale can also be set aside by a suit in the Civil Court. But the powers of the Civil Court to set aside the sale are limited to two grounds only. These are ;

- (i) that the sale has been made contrary to the provisions of the Regulation, and
- (ii) that the plaintiff has suffered substantial injury by reason of the neglect of those provisions.

Thus a suit in the Civil Court can be maintained if the sale has been made not in compliance with the provisions of law regulating the sale. In addition to this, a further proof is necessary to the effect that the plaintiff has suffered substantial injury by reason of the neglect of the provisions,

The Civil Court can also entertain a suit on grounds

State on what grounds the Civil Court can annul a sale of an estate for arrear of land-revenue.

(G.U. '72)

"The jurisdiction of the Civil Court to set aside revenue sale is of extremely limited character" —explained.

(G.U. '70)

Explain the procedure and the grounds on which a sale for arrear of land revenue could be set aside by the courts.

(G.U. '81)

of material irregularity or mistake in publishing or conducting a sale resulting in substantial injury, provided such grounds were taken in a prior application under section 79 before the Deputy Commissioner for setting aside the sale. The limitation for a suit for setting aside a sale by the Civil Court is one year from the date of the sale becoming final. The legality of the sale cannot be questioned by a person who has received a portion of the purchase-money.

[The period within which the suit in the Civil Court is to be instituted is one year from the date of the sale becoming final under section 80. Section 80 provides that the sale becomes final :

- (1) on the sixtieth day of the sale if no application under section 79 is made to the Deputy Commissioner for setting aside the sale, and
- (2) when such an application is made and is dismissed, then the sale becomes final from the date of the order of dismissal, if the order of dismissal is passed beyond sixty days of the sale ; but if the order is passed within sixty days, the sale will be final on the sixtieth day of the sale

Thus in the first case (i. e., where there is no application under section 79.) the suit in the Civil Court is to be instituted within one year from the sixtieth day of the sale; and in the second case the period of one year is to be counted from the date of dismissal of the application under section 79 of the Regulation, if the order of dismissal is passed beyond sixty days of the sale.]

5. Procedure for setting aside sale held under section 91 :

A sale of immovable property under section 91 is held for recovery of arrear not its own but in respect of other estate of the defaulter. The procedure which will govern the attachment and sale of immovable property other than the defaulting estate is the procedure provided in the Civil Procedure Code (Order XXI) for the attachment and sale of immovable property under a decree of the Civil Court. The provisions of Order XXI of the Civil Procedure Code, which relate to the execution of a decree of a Civil Court, will apply not only to the actual conduct of the sale under section 91 of the Regulation, but also for the determination of the claims and objections in connection with such sale, and also to set aside the sale. The Deputy Commissioner, therefore, is competent to hear and determine claims and

State the procedure for setting aside a sale of an estate for arrears other than its own.
(G.U. '78)

objections in connection with such sale, and also to set aside the sale on an application made to him in accordance with the provisions of Order XXI of the Civil Procedure Code just as the Civil Court holding the sale could do in a civil sale. An appeal to the Assam Board of Revenue would be competent under section 147 of the Regulation if an application to set aside the sale has been made and has been refused or disallowed. Section 151 of the Regulation also gives sufficiently wide powers to the Board of Revenue to set aside such sale in appropriate cases. A separate suit like the one provided for by section 82 does not lie, and the Regulation has not provided for a suit for setting aside such sale.

6. Finality of sale, granting of sale certificate and delivery of possession (Ss 80, 85) :

A sale of a defaulting estate becomes final on the sixtieth day of the sale if no application is made within this period to the Deputy Commissioner for setting aside the sale. Where an application is made before the Deputy Commissioner for setting aside the sale under section 78A or 79, the sale becomes final from the date of dismissal of the application, if the order is passed after expiry of sixty days of the sale, but if the order is passed before expiry of sixty days, then on the sixtieth day of the sale (s. 80). The sale thus becoming final is, however, subject to the decisions of the Assam Board of Revenue under section 81, and of the Civil Court in a suit under section 82 of the Regulation. The application to the Board is to be presented, and the suit in the Civil Court is to be instituted, within one year of the sale becoming final. After a sale has become final the Deputy Commissioner has to put the purchaser in possession of the property sold, and grant a certificate, called the sale certificate, to the effect that he has purchased the property. In the sale certificate the date when the sale has become final is mentioned. The title to the property vests in the purchaser from the date of the certificate. The certificate granted is conclusive evidence of the fact that every publication, service, posting or despatch of any statement, list and notice were duly effected, and such facts cannot be challenged or disputed in the civil suit under section 82, but can be raised and questioned in an application under section 81 to the Board of Revenue for setting aside the sale. The issue of a sale certificate under section 85, therefore, has the effect that the ground of irregularity in publishing or serving sale

notices will not be available in a suit to set aside a sale.

7. Suit against certified purchaser (S. 86) :

Section 86 is intended to prevent *benami* purchases. A *benami* purchase arises when a person pays the purchase-money, and purchases the property in the name of another. That other person is known as the *benamidar*, while the person who advanced the money is the real owner. The person whose name is shown in the certificate as a purchaser is treated by the Regulation as the actual purchaser. A claim by a person that he has actually paid the money, and that the certified purchaser was a *benamidar* is not tenable under this provision, and a suit brought on this ground disputing the title of the certified purchaser is liable to be dismissed with costs. The Civil Court has no jurisdiction to enquire into such matters. Section 86 is, therefore, intended to give to the certified purchaser a statutory title against the person, if any, on whose behalf the estate was purchased.

8. Disposal of the sale-proceeds (S. 87) :

The proceeds of the sale are to be applied in the following order :

- (1) first, to defraying the costs of the sale ;
- (2) secondly, to the payment of the arrear due, and
- (3) thirdly, to the payment of any other arrear due by the defaulter.

After satisfaction of the dues in the above manner, the surplus, if any, will be paid to the person whose property was sold. His creditors cannot claim payment out of the surplus sale-proceeds for satisfaction of any debt, and no such payment can be made without an order from the Civil Court.

(The rights of a mortgagee to the surplus sale-proceeds are provided in section 73 of the Transfer of Property Act. The mortgagee under this provision has a right to claim payment of the mortgage-money out of the surplus sale-proceeds, if the failure to pay the arrears of revenue or other charges of public nature did not arise from any default of the mortgagee).

9. Right of pre-emption (S. 89) :

Section 89 gives a right to the non-defaulting recorded co-settlement-holder to purchase the estate in preference to the stranger purchaser. Where there are several recorded settlement-holders of an estate, and some of them have defaulted payment of the revenue due in respect of their shares as a result of which the estate was put to sale

How are surplus
sale-proceeds of
a revenue-sale to
be distributed ?
(G.U. '70)

and the bid of the third party is accepted, then the settlement-holder, who is not in default with regard to the revenue payable by him, can claim to purchase the property in preference to the third party at the sum last bid by paying off the sum. Thus, the right of pre-emption can be exercised under the following conditions :

- (1) The person claiming the right of pre-emption must be a recorded settlement-holder of the estate ;
- (2) he must not himself be in arrears in regard to the revenue payable by him in respect of his share ;
- (3) the claim to purchase the property must be made on the day of sale and before the officer conducting the sale has left the office ;
- (4) the settlement-holder must pay the sum at which the bid was knocked down ; and
- (5) the settlement-holder must fulfil all other conditions of the sale, such as payment of the bid money within the prescribed time.

10. Annulment of settlement (S. 90) :

Section 90 empowers the Deputy Commissioner to annul the existing settlement for non-payment of revenue. The annulment of settlement can be only in respect of temporarily settled estate, i.e., estates held under periodic and annual leases. Before the Deputy Commissioner proceeds to annul the existing settlement for arrear of revenue, he must, first, try the processes provided for in section 69, i.e., he must try to recover the arrears by attachment and sale of the movable properties of the settlement-holder. It is only when the arrear is not so recoverable that the Deputy Commissioner can publish a proclamation annulling the existing settlement, and relinquish the claim of the Government to the arrears. The annulment of settlement is, however, not permissible if the arrear had accrued while it was under the management of the Court of Wards, or while it was under attachment by order of a revenue authority. Further, in the case of an estate held under a periodic patta, over which the settlement-holder has a permanent, heritable and transferable right of use and occupancy, the existing settlement cannot be annulled without the previous sanction of the State Government. The power of the State Government to accord sanction is to be exercised by the Commissioner as directed by Rule 149. In the case of an estate held under an annual patta the Deputy Commissioner himself is competent

Under what circumstances can the existing settlement of an estate be annulled ?

How can annulment be set aside ?

(G.U. '77)

to annul the settlement without the sanction of the Commissioner.

Whenever settlement of an estate is annulled under this section, a notice will be issued to the defaulting settlement-holder requiring him to vacate the land within 15 days. On the expiry of this period the possession of the estate can be taken by the Government in the manner provided by Rule 150.

Effect of annulment :

The consequences that follow the annulment of settlement are :

- (1) the claim of the Government to the arrear is relinquished ;
- (2) the settlement-holder is liable to be ejected from possession of the estate ;
- (3) all incumbrances other than the tenures created bona fide and at a rent not less than the full amount of the revenue for the estate become void ;
- (4) on annulment the Deputy Commissioner can enter into and take under his management the estate, and receive all rents and profits of the estate ;
- (5) the land becomes sarkari, and the Deputy Commissioner can settle it by way of grant, lease or otherwise, like any other lands at the disposal of the Government in accordance with the Settlement Rules ;
- (6) the defaulter cannot claim any right of re-settlement of the annulled estate, but he may be re-settled with the special sanction of the Deputy Commissioner or the Sub-divisional Officer on his paying the arrears with costs. In re-settling the estate, which has been annulled on account of arrears, preference will be given to an applicant who tenders payment of the arrears with costs.

[Appeal—Rule 149 provides that an appeal against such annulment may be preferred to the Board of Revenue within two months of the date of the Commissioner's order].

CHAPTER VI

PARTITION AND UNION OF REVENUE PAYING ESTATES

96. Partition is either perfect or imperfect. "Perfect partition" means the division of a revenue-paying estate into two or more such estates, each separately liable for the revenue assessed thereon. "Imperfect partition" means the division of a revenue-paying estate into two or more portions jointly liable for the revenue assessed on the entire estate.

"Perfect partition" and "imperfect partition" defined,

97. (1) Every recorded proprietor of a permanently-settled estate and every recorded land-holder of a temporarily-settled estate may, if he is in actual possession of the interest, in respect of which he desires partition, claim perfect or imperfect partition of the estate :

Provided that—

- (a) no person shall be entitled to apply for perfect partition if the result of such partition would be to form a separate estate, liable for an annual amount of revenue less than five rupees ;
- (b) no person shall be entitled to apply for imperfect partition of an estate unless with the consent of recorded co-sharers holding in the aggregate more than one half of the estate ;
- (c) a person may claim partition only in so far as the partition can be effected in accordance with the provisions of this Chapter.

Persons entitled to partition.

(2) When two or more proprietors or landholders would be entitled under sub-section (1) to partition in respect of their respective interests in the estate, they may jointly claim partition in respect of the aggregate of their interests.

98. Every application for perfect partition shall be in writing, shall be presented to the Deputy Commissioner, and shall specify the area of the estate, the applicant's interest therein, and the names of the other proprietors or land-holders.

Application for Perfect partition.

99. (1) The Deputy Commissioner shall, if the application is in order and not open to objection on the face of it, publish a proclamation at his office, and at some conspicuous place on the estate to which the application relates ; and shall serve a notice on all such of the recorded proprietors or land-holders of the estate as have not joined in the

Notification of application.

Chapter VI—Partition And Union

application, requiring any of them in possession who may object to the partition to appear before him and state their objections, on a day to be specified in the proclamation and notice, not being less than thirty or more than sixty days from the date on which the proclamation is issued.

(2) Where, from any cause, notice cannot be personally served on any proprietor or land-holder, the proclamation shall be deemed sufficient notice under this section.

100. (1) If an objection preferred as required under section 99 raises any question of title which has not been already determined by a Court of competent jurisdiction, the Deputy Commissioner shall stay his proceedings in for such time as, in his opinion, is sufficient to admit of a suit being instituted in the Civil Court to try the objection

(2) A Deputy Commissioner staying his proceedings under this section shall make an order requiring the objector, or, if for any reason he deems it more equitable, the applicant, to institute such a suit within the time fixed, and, in the event of such a suit not being instituted within that time, may, in his discretion, disallow the objection or dismiss the application, as the case may be.

(3) On a suit being instituted to try any objection, under this section, the Deputy Commissioner shall with reference to the objection, be guided by the orders passed by the Civil Court in the suit.

101. If any objection, other than an objection of the nature referred to in section 100, is preferred as aforesaid to the partition the Deputy Commissioner shall dispose of it himself; unless for any reason he thinks fit to require that it be submitted to a Civil Court for adjudication, in which event the provisions of section 100 shall apply to the objection.

102. When the period specified under section 99 has expired, and the objections (if any) made have been disposed of by the Deputy Commissioner or by the Civil Court as the case may be, the Deputy Commissioner shall, if no such objection has been allowed, proceed to make the partition:

Provided that the Deputy Commissioner may, in his discretion, in order to admit of the institution of an appeal from any decision regarding an objection, or for any other reason he deems sufficient, further postpone his proceedings.

103. The Deputy Commissioner may give the parties the option of making the partition themselves, or of appointing arbitrators for the purpose; or he may make, the

Objection on question of title.

Other objections how dealt with.

Proceedings of Deputy Commissioner after objections have been disposed of

Mode of partition,

partition himself.

104. In making partitions the Deputy Commissioner and any person appointed by him, shall have the same powers for entry on the land under partition, for making out the boundaries, surveying and other purposes, as have been conferred on Survey-officers by or under this Regulation.

Power to enter on land for purposes of partition

105. Where there are no lands held in common, the lands held in severalty by the applicant for partition shall be declared a separate estate, and shall be separately assessed to the Government revenue.

Partition of lands held only in severalty.

106. (1) Where some of the lands are held in common, the Deputy Commissioner shall allot to the applicant for partition his share of those lands in accordance with village-custom if any such exists. If no such custom exists, Deputy Commissioner shall make such division as may secure to the applicant his fair portion of the common lands.

Partition of lands some of which are held in common

(2) The portion of the common lands falling by the partition to the share of the applicant shall be added to the land held by him in severalty, and the aggregate thus formed shall be declared a separate estate, and shall be separately assessed to the Government revenue.

107. Where all the lands are held in common, the Deputy Commissioner shall make such a partition as may secure to the applicant his fair share of the estate, and the land allotted to him shall be declared a separate estate, and shall be separately assessed to the Government revenue.

Partition where all lands are held in common.

108. In making the partition under section 105 or section 106, the Deputy Commissioner shall give effect to any transfer of lands held in severalty, forming part of the estate, agreed to by the parties and made before the declaration of the partition.

Transfers to be effected in making partition.

109. In all cases, each estate shall be made as compact as possible;

Estates to be compact.

Provided that, except with the sanction of the Commissioner, or, where there is no Commissioner, with the sanction of the State Government, no partition shall be disallowed solely on the ground of incompactness.

Rule when building of one sharer is included in estate assigned to another.

110. (1) If, in making a partition, it is necessary to include in the estate assigned to one sharer the land occupied by a dwelling house or other building in the possession of another co-sharer, that other co-sharer shall be allowed to retain it with any buildings thereon, on condition of his paying a reasonable ground-rent for it to the sharer into whose portion it may fall.

Chapter VI—Partition And Union

Rule as to tanks, wells, water-courses and embankments. (2) The limits of the land, and the rent to be paid for it, shall be fixed by the Deputy Commissioner.

111. (1) Tanks, wells, water-courses and embankments shall be considered as attached to the land for the benefit of which they were originally made.

(2) Where from the extent, situation or construction of any such work, it is found necessary that it should continue as the joint property of the proprietors or land-holders of two or more of the estates into which the estate is divided, the Deputy Commissioner shall determine the extent to which the proprietors or land-holders of each estate make use of the work, and the proportion of the charges for repairs to be borne by them respectively, and the manner in which the profits, if any, derived from the work, are to be divided.

112. (1) Places of worship and burial grounds held in common previous to the partition of an estate, shall continue to be so held, unless the parties otherwise agree among themselves.

(2) In such cases they shall state in writing the agreement into which they have entered, and their statement shall be filed with the record.

113. (1) The amount of revenue to be paid by each portion of the divided estate shall be determined by the Deputy Commissioner :

Provided that the aggregate revenue of the new estates shall not exceed the revenue assessed on the estate immediately before partition.

(2) The proprietors or land-holders of each of the new estates shall be jointly and severally liable for the portion of the revenue assessed on their estate, whether new acceptances are taken from them or not.

114 (1) The State Government shall make rules for determining the costs of partition under this Act, the mode in which those costs are to be apportioned and the parties by whom, and the stage of the proceedings at which, they are to be paid :

Provided that the cost of surveying an estate, when a survey is necessary for the purpose of partition, shall be paid ratesably, by all the proprietors or land-holders of the estate, according to their interests therein,

(2) If the costs to be paid by the applicant for partition are not paid within a time to be fixed by the Deputy Commissioner subject to the rules made under this section, the case

Rule as to places of worship and burial grounds.
Determination of revenue payable by each portion of divided estate.

Costs.

may be struck off the file.

115. If at any stage of the proceedings there appears to be any reason for stopping the partition, the Deputy Commissioner may, of his own motion, stay the partition and order the proceedings to be quashed.

Power to stay partition.

116. On completion of a partition the Deputy Commissioner shall publish a proclamation of the fact at his office and at some conspicuous place on each of the new estates or in the estate of which they originally formed part, and the partition shall take effect from the begining of the agricultural year next after the date of the proclamation.

Proclamation of partition.

116. A. As soon as may be after the date on which the partition takes effect under the last preceding section, the Deputy Commissioner shall deliver to the several sharers possession of the separate lands allotted to them, and for this purpose may, if necessary, summarily eject any proprietor or land-holder who may refuse to vacate the same.

Procedure to be followed by Deputy Commissioners in giving effect to the partition.

117. An appeal against the decision of the Deputy Commissioner making a partition shall lie to the Board within one year from the date on which the partition takes effect.

Appeal from decision of Deputy Commissioner.

118. Where the revenue is fraudulently or erroneously distributed at the time of the partition, the State Government may, within twelve years from the time of discovery of the fraud or error, order a new allotment of the revenue upon the several estates into which the estate has been divided, on an estimate of the assets of each estate at the time of the partition, to be made conformably to the best evidence and information procurable respecting the same.

Power to order new allotment of revenue on proof of fraud or error in the first distribution.

119. Imperfect partition shall be carried on according to the provisions of the preceding sections, so far as they are applicable.

Making of imperfect partition.

120. If a recorded proprietor or land-holder is in possession of two or more revenue-paying estates, he may, subject to the rules framed under section 121, claim to have those estates united, and to hold them as a single estate.

Persons entitled to union.

121. The State Government may make rules, not being inconsistent with this Regulation, as to the procedure and principles to be observed in dealing with applications for, and in carrying out, the partition and union of estates, and in assessing the land revenue on estates divided.

Power to make rules.

NOTES :

CHAPTER—VI

**Partition and Union of Revenue-paying Estates.
(Ss. 96—121)**

This chapter prescribes the procedure for partition and also for union of revenue-paying estates.

1. Partition defined (S. 96) :

Partition under the Regulation can be granted in respect of revenue-paying estates only. *Lakhiraj* and other revenue-free estates, therefore, cannot be partitioned by the revenue authorities.

Partition means the division of a revenue-paying estate into two or more estates or portions. Partition may be either :

- (a) perfect partition, or
- (b) imperfect partition.

(a) Perfect Partition :

Perfect partition means the division of a revenue-paying estate into two or more separate estates, each separately assessed to revenue and separately liable for the revenue assessed on it. In perfect partition the division is accompanied by separation of the revenue payable in respect of the entire estate. Perfect partition is not permissible when the result of such partition would be to form a separate estate liable for an annual amount of revenue less than five rupees.

(b) Imperfect Partition :

Imperfect partition means the division of a revenue-paying estate into two or more portions, and such portions, notwithstanding such division, continue to be jointly liable for the revenue of the entire estate. In an imperfect partition no new separate estate for the divided portions are formed.

2. Persons who can claim partition, and the requisite conditions for partition (S. 97) :

A claim for partition can be allowed if the following essential conditions are satisfied :

- (i) the person applying for partition must be either a recorded proprietor of a permanently-settled estate, or a recorded land-holder of a temporarily-settled estate, and

State the legal effects of perfect and imperfect partition. Can a *Lakhiraj* estate be partitioned under the Regulation.

(G.U. '73)

What is partition of revenue-paying estates ?

(G.U. '72)

Define perfect and imperfect partition.
(G.U. '79, D.U. '69)

Distinguish between 'perfect' and 'imperfect' partition as defined in the Regulation.
(G.U. '78, '69)

Name and describe the different kinds of partition and state on what grounds one is entitled to partition under the Regulation.
(D.U. '67)

What are the requisite conditions to be satisfied for partition.
(G.U. '76 '72)

Who can claim partition.
(G.U. '65, '66, '72)

- (ii) he must be in actual possession of the interest in respect of which the partition is claimed;
- (iii) perfect partition can be claimed if the result of such partition would be to form a separate estate with an annual revenue not less than five rupees;
- (iv) if an imperfect partition is claimed, the consent of the recorded co-sharers holding in the aggregate more than one half of the estate, must be obtained;
- (v) the partition claimed must be of such nature as can be effected in accordance with the provisions of this Chapter;
- (vi) two or more such proprietors or land-holders can jointly apply for partition in respect of the aggregate of their interests in the estate.

3. Procedure for perfect partition (Ss. 98-113) :

(A) Application for partition (Ss. 98-99) :

A person claiming partition of his share in an estate must present an application in writing to the Deputy Commissioner stating the following particulars :

- (i) the area of the estate,
- (ii) the applicant's interest in the estate, and
- (iii) the names of the other proprietors or land-holders.

On receiving such application for partition, the Deputy Commissioner publishes a proclamation at his office and at some conspicuous place on the estate, and also serves notices on all the other recorded proprietors or recorded land-holders for filing objections to the claim for partition on a date specified in the notice and the proclamation.

(Under Rule 171 an application for partition is required to be verified and signed by the applicant or by an agent duly authorised by him in that behalf.)

(B) Objection—how determined (Ss. 100-101) :

When objections have been received, the Deputy Commissioner proceeds to dispose of the objections in the following manner :

(i) When the objection raises a question of title not previously determined by a Civil Court, the Deputy Commissioner shall stay the partition-proceedings and direct either the objector, or the applicant to file a suit in the Civil Court for decision on the objection. While staying the proceedings, the Deputy Commissioner will grant a reasonable time to institute the suit. If within the time allowed such suit is not instituted, the Deputy Commissioner may disallow the objection, or dismiss the application, as the case may be

Describe the procedure for perfect and imperfect partition under the Regulation.
(G.U. '67)

How are partitions effected?
(G.U. '77, '79)

(ii) If the objection does not relate to a question of title, the Deputy Commissioner can decide it himself, unless he considers it desirable to have the objection determined by a Civil Court, in which case he may direct either the objector, or the applicant to file the civil suit.

The Deputy Commissioner will be guided by the decisions of the Civil Court whenever such objections are decided by the Civil Court.

After expiry of the time allowed for instituting the suit, and the objections, if any, have been disposed of by the Civil Court or by the Deputy Commissioner himself, as the case may be, the Deputy Commissioner will proceed to make the partition.

(c) Mode of partition (S. 103) :

To effect the partition of an estate, the Deputy Commissioner may adopt any of the following modes :

(i) he may give the parties the option of making the partition themselves, or

(ii) of appointing arbitrators for the purpose, or

(iii) he may make the partition himself.

(D) Actual partition (Ss. 105-II2) :

The estate sought to be partitioned may consist of :

(i) lands held in severalty,

(ii) lands held in common, and

(iii) lands held partly in common and partly in severalty.

(i) In the case of lands held in severalty, the separate portion held by the applicant is partitioned to form a separate estate, and is separately assessed to revenue.

(ii) Where all the lands are held in common, the applicant's fair share in the estate is determined, and on separation allotted to him. The separated portion is then declared a separate estate and separately assessed to revenue.

(iii) In the case where some lands are held in common and some in severalty, the Deputy Commissioner will allot to the applicant his share in the common lands according to the village-custom, and in the absence of any such custom, the division will be made in a manner that the applicant may get a fair portion of the common lands. The portion of the common lands allotted to the applicant is added to the land held by him in severalty. The aggregate thus formed is declared a separate estate and is separately assessed to revenue.

The partition is effected in such manner that the resultant estates may be as compact as possible.

(E) Rules regarding buildings and other works on the land (Ss. 110-112) :

In making partition of an estate regard must be had to certain properties and works on the land, which by their nature and situation, it is not possible, or expedient to partition and allocate to one party or another. The rules to be observed, and the procedures to be followed in respect of such properties or works are laid down in sections 110-112.

These are :

(i) Dwelling house or other buildings (S. 110) :

When dwelling house or other buildings in the possession of one co-sharer stands on the land allotted to another co-sharer, the co-sharer owning the house or building is to be allowed to retain the land with the building on condition of his paying a reasonable ground rent to the other co-sharer to whom the land was allotted. In such case the limits of the land, and the rents to be paid are to be fixed by the Deputy Commissioner.

(ii) Tanks, wells, water-courses and embankments (S. 111) :

These works will continue to be the joint properties of the proprietors or land-holders of two or more of the estates, if from the extent, situation or construction of such works, it is found necessary to retain these as joint properties. The Deputy Commissioner in such case will determine the extent to which the proprietor or land-holder of each estate will be entitled to make use of these works, and the proportion of the repairing charges to be borne by them, and also the manner in which the profits derived from these works are to be divided.

(iii) Places of worship and common burial grounds (S. 112) :

Places of worship and burial grounds held in common prior to partition will continue to be so held, unless the parties otherwise amicably agree. In case of an agreement, the parties are to submit it in writing to the Deputy Commissioner, and the statement containing the agreement will be filed with the record.

(F) Allotment of revenue on partition (S. 113):

On partition of an estate the Deputy Commissioner has to split up the revenue of the entire estate and determine the revenue payable by each portion of the divided estate. But the total revenue of the new estates cannot exceed the revenue of the original estate. The proprietors and land-holders

of each of the new estates will be jointly and severally responsible for the revenue assessed on the new estates respectively allotted to them on partition.

4 Proclamation of partition, and delivery of possession (Ss: 116-116A) :

On completion of partition of an estate, the Deputy Commissioner has to publish a proclamation of the fact (i) at his office and (ii) at some conspicuous place of each of the new estates, or of the original estate. The partition becomes effective from the begining of the next agricultural year following the publication of the proclamation. After the partition has taken effect, the Deputy Commissioner will deliver possession of the separate lands to the sharers according to the allotments made with them, and, if necessary, by summarily ejecting the proprietor or land-holder refusing to vacate the land.

5. Costs of partition (S: 114) :

The costs of partition and the apportionment thereof are to be determined according to Rules 173-178 framed under this section. After an order directing partition is issued, the Revenue Officer authorised to make the partition is required to prepare estimate of costs which requires approval of the Deputy Commissioner. The estimated costs of survey and partition shall be paid by the applicant and other sharers in proportion to their respective shares.

6. Procedure for imperfect partition (S. 118) :

In making imperfect partition the same procedure as in the case of perfect partition is followed. In imperfect partition the estate is divided into several portions and allotted to several sharers without forming separate estates. The revenue of the entire estate continues to be joint, and the several portions are jointly liable for the revenue of the entire estate.

7. Appeals (S. 117) :

Section 117 provides for an appeal against the order of partition. An appeal against the decision of the Deputy Commissioner making a partition can be preferred to the Assam Board of Revenue within one year from the date on which the partition takes effect.

8. Union of estates (S. 120) :

A recorded proprietor or land-holder in possession of two or more revenue paying estates can apply to have the estates united so as to form a single estate. Such application for union of estates is to be presented by the applicant or by any person duly authorised by him in writing in that behalf.

CHAPTER VII

POWERS OF OFFICERS

Part A—Revenue-Officers.

122. The State Government shall be the chief controlling authority.

State Government.

123. Every Commissioner of a Division, Deputy Commissioner, Assistant Commissioner and Extra Assistant Commissioner shall be a Revenue-officer for the purposes of this Regulation.

Ex-officio Revenue officers.

124. (1) The State Government may, for the purposes of this Regulation—

Appointment of other Revenue Officers.

(a) appoint to each district, in addition to the officers mentioned in section 123, as many other Revenue-officers as they think fit, and

(b) suspend or remove any officer appointed under this section.

Note:—The following officers have been appointed to be Revenue-officer in addition to the officers mentioned in section 123 :—

(1) *Tahsildars* including *Naib Tahsildars*,

(2) Sub-Deputy Collectors.

(3) *Mauzadar* in the Assam Valley.

(4) *Revenue Nazirs* including *Naib Nazirs*.

(5) All officers who are authorized to receive payment of land revenue or other money realisable under the Regulation or rules issued there-under, and who have given, or are required to give, security for the due performance of their duties.

125. (1) The State Government may, for the purposes of this Regulation—

Subdivisional Officer.

(a) divide any district into subdivisions, or make any portion of a district a subdivision, and may alter the limits of a subdivision, and

(b) place any Assistant Commissioner or Extra Assistant Commissioner in charge of one or more subdivisions of a district, and at any time remove him therefrom.

(2) An Assistant Commissioner or Extra Assistant Commissioner in charge of a subdivision shall be called the Subdivisional Officer.

126. (1) A Subdivisional Officer shall in addition to any other powers conferred on him by or under this Regulation, have the following powers of a Deputy Commissioner namely :—

Powers of Subdivisional officers.

- (a) power to dispose of cases of gain by alluvion of by dereliction of a river, and loss by diluvion under section 34,
- (b) power to inquire into and report on revenue-free holdings and to assess revenue on resumed lands under Chapter III, Part E,
- (c) the powers conferred by sections 50 to 58 (both inclusive) in respect of registration,
- (d) power to attach and sell moveable property belonging to defaulters under Chapter V, and
- (e) subject to the confirmation of the Deputy Commissioner, power to receive applications and to do all that is necessary for effecting partition and union of estates under Chapter VI

(2) The State Government may confer on any Subdivisional Officer all or any of other powers of a Deputy Commissioner under the Regulation.

NOTE.—All Subdivisional Officers in the plains districts of Assam have been vested ex-officio with the following powers in addition to those conferred on them by the Regulation :—

- (i) Power to fine for commission to give notice of injury to boundary marks (Section 26).
- (ii) Power conferred by section 65 in respect of the opening of separate accounts
- (iii) Powers conferred by sections 70, 72, 73, 74, 75, and 85 in respect of the sale of defaulting estates.
- (iv) Power to proceed against immovable property for arrears of revenue (section 91 (1).).
- (v) Power to proceed against defaulting Revenue-Officers and their sureties (sections 145 and 146).
- (vi) All Subdivisional Officers in the plains districts of Assam have been vested with powers to receive and dispose of applications under section 78A.

127. The State Government may confer upon Assistant Commissioners and Extra Assistant Commissioners not in charge of subdivisions of districts all or any of the powers conferred by or under this Regulation on Subdivisional Officers in such cases or classes of cases as the Deputy Commissioner of the district may, from time to time, refer to them for disposal.

128. (1) All Revenue-officers in a district shall be subordinate to the Deputy Commissioner, and shall exercise all powers conferred on them by or under this Regulation subject to his control.

(2) Subject to the general control of the Deputy Commissioner, all Revenue-officers, other than the Sub-divisional

Power to invest Assistant Commissioners, etc., not in charge of subdivision with special powers.

Subordination of Revenue-officers.

Officer, in a subdivision of a district shall, unless the State Government otherwise direct, be subordinate to the Subdivisional Officer, and shall exercise all powers conferred on them by or under this Regulation subject to his control.

(3) Subject to the general control of the State Government all Revenue-officers in a district which is included in a Commissioner's division shall be subordinate to the Commissioner, and shall exercise all powers conferred on them by or under this Regulation subject to his control.

(4) Subject to the general control of the State Government, all Revenue Officers shall be subordinate to the Board, and shall exercise all the powers conferred on them by or under this Regulation subject to his control.

129.(1) Subject to any rules which the State Government may make in this behalf, a Deputy Commissioner or Subdivisional Officer may refer any case to any Revenue-officer subordinate to him for investigation and report, or, if that officer has power to dispose of the case, for disposal.

Power to distribute work.

(2) Subject as aforesaid, a Deputy Commissioner may direct that any Revenue-officer subordinate to him shall, without such reference, deal with any case or class of cases arising within any specified area, and either investigate and report on the case or class of cases, or, if he has power, dispose of it himself.

(3) A subordinate Revenue-officer shall submit his report on any case referred to him under this section for report to the officer referring it, or otherwise as may be directed in the order of reference; and the officer receiving the report may, if he has power to dispose of the case, dispose of the same, or may return it for further investigation to the officer submitting the report or may hold the investigation himself.

130. The Board or a Deputy Commissioner or Subdivisional Officer may withdraw any case pending before any Revenue Officer subordinate to it or him and either dispose of it itself or himself or refer it for disposal to any other Revenue Officer subordinate to it or him and having power to dispose of the same.

Power of superior revenue authorities to withdraw and transfer cases.

131. Whenever any Revenue-officer who has been invested with any powers under this Regulation in any district or subdivision is transferred to another district or subdivision, he shall, unless the State Government otherwise direct, be held to be invested with the same powers, in the district or subdivision to which he is so transferred.

Powers of officers transferred to another district.

132. When a Deputy Commissioner dies or is disabled from performing his duties, such officer as the State Government may by rule direct shall take executive charge of his district, and shall be deemed to be a Deputy Commissioner under this Regulation, until a successor of the Deputy Commissioner so dying or disabled is appointed, and that successor takes charge of his office, or until the person so disabled resumes charge of his office.

Part B.—Settlement and Survey officers.

Appointment of Settlement officers

133 (1) The State Government may appoint a Settlement-officer to be incharge of the settlement of any local area or class of estates, and as many Assistant Settlement officers as they think fit, and all Assistant Settlement-officers so appointed shall be subordinate to the Settlement officer.

Note:—(1) All mouzadars in the Assam Valley, and in the case of Mouzadars who are minors, their Sarbarahkers, have been appointed ex-officio Assistant Settlement-officers.

(2) Meuzadars in Cachar excluding Karimganj Subdivision have been appointed ex-officio Assistant Settlement Officers.

(2) The State Government may suspend or remove any officer appointed under this section.

Appointment of Survey-officers.

134. The State Government may appoint a Survey-officer to be in-charge of the survey of any local area or class of estates, and as many Assistant Survey-officers as they think fit ; and all Assistant Survey-officers so appointed shall be subordinate to the Survey-officer.

(2) The State Government may suspend or remove any officer appointed under this section.

Powers of Settlement-officers.

135. A Settlement-officer shall, in addition to any other powers conferred on him by or under this Regulation, have in the local area or class of estates under settlement—

- (a) all the powers conferred by Chapter III, Part E, on a Deputy Commissioner ; and
- (b) when a survey does not form part of the settlement all the powers conferred by Chapter III, part B, on a Survey-officer.

Powers of Assistant Settlement-officers and Assistant Survey-officers.

136. An Assistant Settlement-officer and Assistant Survey-officer shall have all the powers conferred by this Regulation on a Settlement-officer and Survey-officer respectively, subject to such restrictions as the Settlement-officer or Survey-officer may from time to time, impose :

Provided that no Assistant Settlement-officer shall,

unless specially empowered by the Government, have power—

- (a) to frame proposals for assessment under section 30;
- (b) to exclude persons under sections 35 and 36 for refusal to accept settlement ; or
- (c) to assess land which the State Government has under section 45, sub-section (2), declared liable to assessment.

137. The State Government may invest any Settlement-officer, Survey-officer, Assistant Settlement-officer, or Assistant Survey-officer with all or any of the powers of a Deputy Commissioner under this Regulation, within such limits, and with such restrictions, and for such period, as they think fit.

Investing of Settlement-officers with special powers.

Note:—All *Mouzodars* in the Assam Valley Districts, and in the case of *mouzodars* who are minors, their Sarbarahkars, having been appointed as Assistant Settlement Officers, have been invested with the powers—

- (a) to effect registration under section 53A in uncontested cases, and
- (b) to dispose of, under Chapter VI of the Regulation, all applications for partition of revenue-paying estate in which no objection is preferred.

138. (1) At any time during the currency of a settlement the State Government may invest any officer with all or any of the powers of a Settlement-officer or Survey-officer under this Regulation, within such limits, and with such restrictions, and for such period, as they think fit.

Exercise of powers of Settlement-officer or Survey officer by other officers.

(2) If no Settlement-officer or Survey-officer is appointed, and no officer is invested with the powers of a Settlement-officer or Survey-officer under sub-section (1), the Deputy Commissioner and Subdivisional Officer (if any) shall have all the powers conferred by this Regulation on a Settlement-officer or Survey-officer as the case may be.

Part C—Mode of conferring and withdrawing powers.

139. (1) In conferring powers under this Regulation the State Government may empower persons by name or classes of officials generally by their official titles, and may vary or cancel any order conferring such powers.

Conferring and withdrawing of powers.

(2) The State Government may withdraw from any officer the powers conferred on him by this Regulation.

NOTES :

CHAPTER VII

Powers of Officers (Ss. 122-139)

Chapter VII gives a list of the officers who are declared ex-officio Revenue Officers, and defines their powers under the Regulation. This Chapter also provides for the appointment of other Revenue Officers by the State Government, and also for the appointment of Settlement Officer, Survey Officer, Assistant Settlement Officer and Assistant Survey Officer.

1. Revenue Officers (Ss. 123-124) :

Under the Regulation the State Government is the chief controlling authority ; and all Revenue Officers function under the general control of the State Government. The Regulation has declared the following officers as ex-officio Revenue Officers :

(a) Commissioner of a Division.

(b) Deputy Commissioner.

(“Deputy Commissioner” is defined to include the Additional Deputy Commissioner.)

(c) Assistant Commissioner, and

(d) Extra Assistant Commissioner.

In addition to the above classes of Revenue Officers, the following other Revenue Officers have been appointed by the State Government as empowered by section 124 :

(i) Sub-Deputy Collectors. .

(ii) Mauzadars.

(iii) Tahsildars.

(iv) Revenue Nazirs.

(v) All officers who are authorised to receive payment of land-revenue or other money realisable under the Regulation.

2. Subdivisions and Subdivisional Officers (S. 125) :

For the purposes of the Regulation the State Government may divide a district into subdivisions, and may alter the limits of a subdivision, and place any Assistant Commissioner or Extra Assistant Commissioner in charge of a subdivision. ■ called the Subdivisional Officer

3. Powers of the Subdivisional Officer. (S. 126) :

The Deputy Commissioner is the chief officer in charge of the general administration of a district. Powers under

the Regulation are vested in the Deputy Commissioner of a district. In the subdivision the Subdivisional Officer can exercise the following powers of the Deputy Commissioner :

- (i) power to assess to revenue lands gained by alluvion or by dereliction of a river, and grant reduction in revenue in case of loss of area by diluvion, during the currency of the settlement as provided in section 34 ;
- (ii) power to enquire into lands held free of assessment though liable to be assessed, and report his proceedings to the Government ; and to assess to revenue on resumption of lands under Chapter III, Part E ;
- (iii) power to grant mutation or registration, and to impose penalty for omitting to apply for registration within the time specified ;
- (iv) power to attach and sell movable properties of a defaulter for recovery of arrear revenue ; and
- (v) power to effect partition of an estate and also union of estates, but subject to confirmation by the Deputy Commissioner.

In addition to the above enumerated powers, the Subdivisional Officer can be vested with other powers of the Deputy Commissioner by the State Government. Accordingly the following powers have been conferred on the Subdivisional Officers by the State Government :

- (i) power to impose fine for omission to give notice of injury to boundary-marks (S. 26) ;
- (ii) power to open separate accounts under section 65 ;
- (iii) powers conferred by sections 70, 72, 73, 74, 75, and 85 in respect of the sale of defaulting estates ;
- (iv) power to proceed against other immovable property of the defaulter for the recovery of arrears of revenue [S. 91 (1)] ;
- (v) power to proceed against defaulting Revenue Officers and their sureties (Ss. 145-146) ;
- (vi) power to receive and dispose of application for setting aside the sale of a defaulting estate under section 78 A.

4. Powers of Assistant Commissioner and Extra Assistant Commissioner (S. 127) :

The Regulation has empowered the State Government to confer on the Assistant Commissioner and the Extra Assistant Commissioner, not in charge of subdivisions, with all or

What are the powers of Subdivisional Officer under the Regulation.
(G.U. '73)

any of the powers of the Subdivisional Officer to deal with such cases as may be referred to them for disposal by the Deputy Commissioner. These two classes of Revenue Officers, therefore, will have power to deal with the cases if they are conferred with the powers of the Subdivisional Officer by the State Government.

5. Subordination and Control of Revenue Officers (S. 128) :

The State Government is the chief controlling authority with regard to the revenue administration of the State. All Revenue Officers at various levels are under the general control of the State Government. Subject to the general control of the State Government, the subordination and control of the Revenue Officers at different levels are as follows :

(1) All Revenue Officers are subordinate to the Assam Board of Revenue, and function and exercise the powers conferred on them subject to the control of the Board.

(2) In a Commissioner's division, the Commissioner is the chief officer in charge of the revenue administration, and all Revenue Officers of a district included in the Commissioner's division are subordinate to him and exercise their powers subject to his control.

(3) In a district the Deputy Commissioner is the chief officer in charge of the revenue administration ; and powers under the Regulation are vested in the Deputy Commissioner. All Revenue Officers in the district are subordinate to him and exercise the powers conferred on them subject to his control.

(4) In the subdivision, subject to the general control of the Deputy Commissioner, the Revenue Officers are subordinate to the Subdivisional Officer, and exercise their powers subject to his control.

6. Distribution, withdrawal and transfer of cases (Ss. 129-130) :

The Deputy Commissioner, and the Subdivisional Officer in a subdivision, can refer any case to a subordinate Revenue Officer for investigation and report, or for disposing of the cases if he has been conferred with the power to dispose of it. Further, the Deputy Commissioner may generally direct any subordinate Revenue Officer to deal with any case or class of cases arising within any specified area, and to investigate and report, or to dispose of the cases if he has the power to dispose of the same.

The Assam Board of Revenue, the Deputy Commissioner

or the Subdivisional Officer can withdraw any pending case from any subordinate Revenue Officer, any either dispose of it itself or himself, or refer it for disposal to any other subordinate Revenue Officer having power to dispose of the same.

7. Powers of Officers when transferred (S. 131) :

A Revenue Officer, who has been invested with any powers under the Regulation while posted in a district, is transferred to another district, he will continue to hold the same powers.

8. Appointment of Settlement Officer etc. and their powers (Ss. 133-135) :

The State Government can appoint a Settlement Officer to be in charge of the settlement of any local area or class of estates, and also Assistant Settlement Officers who shall be subordinate to the Settlement Officer. The State Government can also appoint a Survey Officer to be in charge of the survey of any local area or class of estates, and Assistant Survey Officers subordinate to him.

The Settlement Officer exercises such powers as are conferred on him by the Regulation. Under Chapter III of the Regulation, the Settlement Officer can determine the boundary disputes, frame general proposals of assessment for approval of the Government and assess revenue, prepare record-of-rights and grant settlement and re-settlement of land. In addition to the above powers the Settlement Officer is also vested with :

- (1) the powers of the Deputy Commissioner under Chapter III, Part E to investigate and report to the Government regarding lands held free of assessment, and to assess to revenue such lands when declared liable to assessment by the State Government ; and
- (2) the powers of the Survey Officer under Chapter III when survey does not form part of the settlement.

9. Powers of Assistant Settlement Officers etc. (S.136)

Assistant Settlement Officers will generally have all the powers of the Settlement Officer subject to such restrictions as the Settlement Officer may impose ; but they must be specially empowered by the State Government in order that they may exercise the following powers of the Settlement Officer :

- (1) to frame general proposals of assessment for approval of the Government under section 30 ;

- (2) to exclude persons from possession of an estate on refusal to accept settlement, and to settle the land with others as provided in sections 35 and 36 ; and
- (3) to assess the land in case of resumption under orders of the Government under section 45 (2).

Assistant Survey Officers can exercise the powers of the Survey Officer, subject to such restrictions as the Survey Officer may impose.

10. Investing Settlement Officer and others with the powers of the Deputy Commissioner (S. 137) :

The State Government can invest any Settlement Officer, Survey Officer, Assistant Settlement Officer and Assistant Survey Officer with ~~all~~ or any of the powers of the Deputy Commissioner under the Regulation.

II. Exercise of the Powers of the Settlement Officer by other Officers (S. 138) :

During the currency of a settlement, the State Government can invest any officer with the powers of a Settlement Officer or Survey-Officer. If, however, no Settlement Officer or Survey-Officer is appointed, and no officer is invested with the powers of the Settlement Officer or the Survey Officer, then the Deputy Commissioner, and the Subdivisional Officer in the subdivision, will exercise all the powers of the Settlement Officer or Survey Officer under the Regulation.

[A Sub-Deputy Collector when appointed as an Assistant Settlement Officer can be invested under section 137 with the powers of the Deputy Commissioner to deal with mutation cases. When so authorised, the Sub-Deputy Collector as Assistant Settlement Officer will have jurisdiction to dispose of registration or mutation cases under sections 50 to 54 ; and an appeal to the Settlement Officer would be competent against his orders. The Deputy Commissioner and the Subdivisional Officer can exercise the powers of the Settlement Officer under section 138 when no Settlement Officer is appointed. In such circumstances the Deputy Commissioner, and the Subdivisional Officer in the Subdivision concerned, can entertain an appeal against the order of the Sub-Deputy Collector in a mutation case.

In Golap Chandra Bora-vs-Padmachar Koch (I. L. R. Assam 1954 page 283) the High Court had held "where a Sub-Deputy Collector is authorised under section 137 of the Assam Land and Revenue Regulation for mutation or registration purposes, the Subdivisional Officer held concurrent powers with the Deputy Commissioner for entertaining appeals against the orders of the Sub-Deputy Collectors

In the Subdivision concerned. In such circumstances a second appeal to the Deputy Commissioner was not competent.]

12. The early system of revenue administration under British rule :

Assam came under the British rule in the year 1826 after the treaty of Yandaboo. Prior to it, the Ahom kings ruled the State. Under the Ahom rules the soil was regarded as the absolute property of the king, and the king made revenue-free grants of lands to temples, and for some religious or charitable purposes, and also allowed *raiyats* to cultivate lands. For purpose of revenue administration, the whole population was divided into *khels* of 1000 to 5000 people, and these were again subdivided into *gots*. Each *got* contained three or four *paiks* or *raiyats*, and one person of each *got* was bound to render personal service throughout the year to the Raja or to some one of the officers of State. In return each member of the *got* was allowed two *puras* of rice land free of rent. Each *paik* was also allowed a piece of land for his house and garden, for which he paid one rupee annually as house, poll, or hearth tax. If a *paik* cultivated any rice land in excess of two *puras*, he was assessed annually on it at the rate of one rupee per *pura*.

For the first few years of the British rule, the system of administration of the former rulers was continued, but personal service was done away with, and each *paik* was assessed in a lump sum of Rs 3/- for his home-stead, garden, and rice lands. In 1832 the system of land assessment was first introduced. Each district was divided into *mahals* which were re-settled annually until the year 1835. The collection of land tax was made through commission agents, called *chaudhuris*, *mauzadars* and *kakotis*. In 1836-42, under a new plan, a group of villages were constituted into a *mauza* and it was settled for a short term of years with the *chaudhuris* or *mauzadars*. In 1854, however, annual settlements had again been reverted to. For the purpose of assessment lands were divided into three main classes, namely : (1) *basti* or *beri* or home-stead, (2) *rupit* or low rice land, and (3) *faringati* or high lands. The rates assessed on these three classes were different for different districts. The highest assessment was 6 annas per *bigha* for *rupit* and 4 annas for all other classes of land. These rates remained practically unchanged until 1870 when the assessment was raised to Re. 1 a *bigha* for *basti*, 10 annas for *rupit*, and 8 annas for *faringati*.

In the period between 1861 to 1867, there had been

Write short notes
on *khel*, *Got* and
Paik.
(G.U. '72, '79)

Describe the early
system of revenue
administration un-
der British rule.
(D.U. '65 G.U. 75,
'79,

a considerable discussion between the Bengal Government, the Board of Revenue and the Commissioner of Assam regarding the question of raising the assessment, and at the same time giving the cultivators a permanent, heritable and transferable property in their lands. Colonel Hopkinson, the then Commissioner of Assam, sought to enforce throughout Assam "a *raiyatwari* settlement of the simplest and purest character", and wanted the land tax to be doubled. It was decided by the Government that in Assam it was "every way a preferable course to give to the actual occupant of the soil as secure a tenure as can be conferred upon him, subject to the payment of revenue to the Government at rates fixed for long periods, and to preserve a clear distinction between the rights and obligations of proprietorship and duties of fiscal and official administration." There was further discussion, and the final result was the acceptance of certain principles of assessment, the most important of which were the following :—

- (1) Colonel Hokinson's proposed rates of assessment were sanctioned. The rates continued in force till 31st March 1893.
- (2) The necessary field measurements and local enquiries were to be made.
- (3) The settlement was to be made with the occupant cultivators, and the term of settlement was to be ordinarily ten years.
- (4) The rates of assessment were to be fixed for the term of settlement, but liable to alteration in future settlements.
- (5) Permanent holdings were to be heritable and transferable on condition that the transfers were registered.
- (6) Lands brought under cultivation during the currency of a settlement were to be assessed yearly on actual measurements, and no heritable and transferable title was to be conferred on the cultivators in respect of such lands until the next settlement.
- (7) The revenue was to be collected by the *mauzedars* placed in charge of fiscal circles, who were to be allowed no interest in the land, but were to get commission on the revenue they might collect.

On the basis of these principles a set of settlement rules, known as Settlement Rules of 1870, were passed in the year 1870 and were enforced in the same year. These

rules also declared the Commissioner, Deputy Commissioners, Assistant and Extra Assistant Commissioners, *mauzadars* and *mandals* to be Revenue Officers, and assigned to them their several powers in making settlements. The province was divided into *mauzas* or circles under *mauzadars*, and each *mauza* was subdivided into village tracts of not less than 200 houses under *mandals*, who were *mauzadar*'s assistants. The rules required the *mauzadar* to make the actual measurements prior to settlement, The *mauzadar* was required to record the results of his measurements in a field register (*chitha*) from which an abstract (*khatian*) and a revenue roll (*jamabandi*) were prepared.

All cultivated lands were divided into "fixed cultivation" and "fluctuating cultivation". The "fixed cultivation" lands included the *rupit* and homestead or *basti* lands, which were held permanently. The settlements of such lands were called "settled assessments", it being assumed that they would rarely call for revision. "Fluctuating cultivation" included all high paddy lands, and lands where mustard seed and the different descriptions of pulses were grown. The settlement of each cultivator's holding was completed by the issue of a *patra* or lease to him, and taking from him a *cabuliyat* or acceptance, in prescribed form. In the case of "settled assessment", i.e. lands held permanently, the cultivator was given the option of taking a lease for a period not exceeding ten years with the guarantee against enhancement of assessment for the term of his lease. The holdings so settled were declared to be heritable and transferable, subject to the condition that all transfers were registered in the office of the Deputy Commissioner. The lessee could relinquish his land provided he gave 3 months' notice as was required in the case of lands held under an annual lease. In the case of lands covered by "fluctuating cultivation", annual leases were issued. A condition of the annual lease was that the Government could take away the land if required for public purpose, and in that case the lessee would be entitled to compensation only for the loss of any crops or houses standing thereon, but not for the land itself.

In 1883 long-term settlements of *khraj* lands were introduced through the Decennial Settlement Rules of 1883 which took effect from 1st April 1883 and terminated on the 31st March 1893. Under these rules settlements were made

and leases granted for a term of ten years conferring on the holder of such lease a permanent, heritable and transferable right in the land covered by it. With the passing of the Regulation all previous rules were superseded by the rules framed under the Regulation.

13. Mauzadari and Tahsildari System :

The *mauzadars* are appointed as Revenue Officers under the Regulation. In the early days of the British rule, the revenue was collected through an agency known originally as the *chaudhuri*, and later as the *mauzadar*. In the initial stage of the British rule, the settlement of lands with *paiks* or *raiayats*, as under the former rulers, was continued, but personal service was done away with, and instead each *paik* or *raiyat* was assessed in a lump sum of Rs. 3/- for his homestead, garden, and rice land. In 1832 the system of assessment of land was first introduced; and each district was divided into *mahals* which were re-settled annually until the year 1835. The collection of land tax was made through commission agents, called *chaudhuris*, *mauzadars* and *kakatis*. In the period between 1836 to 1842, a new plan was adopted under which a circle of villages was constituted into a *mauza*, and it was settled for a short term of years with the *chaudhuri* or *mauzadar*, who took upon himself all risks of loss, while on the other hand, he enjoyed the additional rents which accrued from cultivation in extended areas. In 1854, however, annual settlements had again been reverted to. In 1870 a new set of settlement rules were enforced. Under these rules the province was divided into *mauzas* or circles under *mauzadars*. The rules required the *mauzadars* to make the actual measurements prior to settlement of lands. The *mauzdar* was required to record the results of his measurements in a field register (*chitta*) from which an abstract (*khatian*) and a revenue roll (*jamadandi*) were prepared. The assessment made on the basis of these measurements gave the total revenue demand for the year. The *mauzadar* was responsible for the revenue of the entire *mauza*, and he was required to execute an agreement which held him personally liable for the due collection of the revenue demand. The *mauzadar* was thus responsible not only for the collection of the revenue, but also, for its assessment, over a fixed area. His power was considerable and the system was open to obvious objections. In 1883 it was, therefore, proposed gradually to abolish the *mauzadar* system, and to substitute

Write a short essay on the evolution of the present *Maузadari* system in Assam Valley districts. (G.U. '65)
Write short notes on : (1) *Maузadari* system and (2) *Tahsildari* system. (G.U. '78)

by the *tahsildari* system in its place. In the *tahsildari* system the revenue collections were made through *tahsildars* who were salaried officers having no personal interest in the assessment or collections of revenue. Although the *tahsildari* system was cheaper, it, however, led to greater arrears and greater remissions. It was less popular as people had to go a long distance to pay the revenue. In 1903 Sir Bampfylde Fuller, the then Chief Commissioner, proposed the re-introduction of the *mauzadar* system, and the Government of India accepted the proposal. This system is still prevalent in the Assam Valley districts. In the present system the *mauzadar* has no concern with survey and assessment which are done by a separate land records staff of Sub-Deputy Collectors, *Kenungos* and *mandals*. He is bound to pay the revenue dues of his *mauza* and is entitled to commission on the collections paid by him.

CHAPTER VIII

PROCEDURE

Place for holding Court.

140. Subject to the orders of the State Government—

- (a) the Board may hold Court at any place within the State of Assam ;
- (b) a Deputy Commissioner, and Assistant Commissioner, or Extra Assistant Commissioner, (whether in-charge or not of a subdivision of a district), a Settlement-officer, an Assistant Settlement-officer, a Survey-officer, and an Assistant Survey-officer may hold his Court at any place within the limits of the district or subdivision to which he is appointed

Power to summon persons to give evidence, etc.

141. (1) The Board and any officers mentioned in section 140 may summon any person whose attendance they consider necessary for the purposes of any investigation or other business before them conducted under this Regulation.

(2) All persons so summoned shall be bound to attend either in person or by authorised agent as the Board or such officer may direct ;

and to state the truth upon any subject respecting which they are examined ;

and to produce such documents and other things as may be required.

Power to fine person summoned for non-attendance.

142. If any person fails to comply within the time fixed by a notice served on him with any requisition made upon him under section 141, the Board or the Officer, as the case may be, making the requisition may impose upon him such daily fine as they or he thinks fit, not exceeding fifty rupees, until the requisition is complied with. Provided that, whenever the amount levied under an order under this section passed by an Officer exceeds five hundred rupees the Deputy Commissioner shall report the case to the Board and no further levy in respect of the fine shall be made otherwise than by authority of the Board.

Power to refer disputes to arbitration.

143. (1) The State Government, a Deputy Commissioner, a Sub-divisional Officer, a Settlement-officer or an Assistant Settlement-officer, a Survey-officer or an Assistant Survey-officer may, with the consent of the parties, refer any dispute before them to arbitration.

(2). In all cases referred to arbitration the procedure laid down in the Code of Civil Procedure in force for the time

being shall be followed so far as applicable, and the officer referring the case shall discharge the function of the Civil Court.

144. All fees, rents, fines, costs, and other money payable under this Regulation, or under rules made by the State Government under this Regulation, shall be recoverable as an arrear of land revenue.

Recovery of fines and costs.

144-A. All rents, fees, and royalties due to the Government for the use or occupation of land or water (whether the property of the Government or not) or on account of any products thereof and all moneys falling due to the Government under any grant, lease, security bond, or contract which provides that they shall be so recoverable, may be recovered under this Regulation in the same manner as an arrear of land-revenue.

Recovery of rents, fees, royalties, and of moneys due to the Government in certain cases.

145. If a Deputy Commissioner has reason to believe that a Revenue-officer subordinate to him, who has collected any sum due under this Regulation, has absconded, or is about to abscond, without accounting for such sum, he may issue a warrant for the apprehension of the officer, and proceed against him, or cause proceedings to be instituted against him, under Chapter V, as if he were a defaulter in the amount so collected.

Proceedings against defaulting Revenue-officers.

146. Any person who has become liable for any amount as surety for a defaulter or Revenue-officer, may be proceeded against in the manner prescribed in Chapter V, as if he were a defaulter in such amount.

Proceedings against sureties of defaulter or Revenue-officers.

147. Appeals shall lie under this Regulation as follows:—

- (a) to the Board from orders, original or appellate, passed by a Deputy Commissioner, Settlement Officer or Survey Officer ;
- (b) to the Deputy Commissioner, from orders passed by a Subdivisional Officer, an Assistant Commissioner or Extra Assistant Commissioner
- (c) to the Settlement Officer, from orders passed by an Assistant Settlement Officer ;
- (d) to a Survey Officer, from orders passed by an Assistant Survey Officer :

Authority to whom appeals lie.

Provided that no appeal shall lie against the following orders :—

- (i) orders of an Assistant Settlement Officer or Assistant Survey Officer under sections 21 and 22,
- (ii) orders of a Survey Officer or Settlement Officer—
 - (1) under sections 21, 22 and 24 ;
 - (2) apportioning the expense of erecting and

repairing boundary-marks in accordance with rules made under section 27 ;

- (iii) orders of a Survey Officer, Settlement Officer or Deputy Commissioner, original or appellate, imposing or confirming a fine not exceeding fifty rupees;
- (iv) orders of a Deputy Commissioner under section 79 setting aside or refusing to set aside the sale ;
- (v) any decision given in accordance with an award of arbitrators appointed under section 143, except in the case of fraud or collusion ;
- (vi) orders under section 148, admitting an appeal after the period of limitation has expired ;
- (vii) orders expressly declared by this Regulation to be final subject to the provision of section 151.

Limitation of appeal.

148. (1) Unless otherwise specially provided in this Regulation, or in rules issued under this Regulation,—

- (a) no appeal under section 147, clause (a) shall lie after the expiration of 2 months from the date of the order appealed against ;
- (b) no appeal under the same section, clause (b), (c) and (d) shall lie after the expiration of thirty days from the date of the order appealed against.

(2) In computing the period prescribed for an appeal by this section, the day on which the order appealed against was passed, and the time requisite for obtaining a copy of such order, shall be excluded.

(3) An appeal may be admitted after the period of limitation prescribed therefor by this section when the appellant satisfies the Board or officer to whom he appeals that he has sufficient cause for not presenting the appeal within that period.

149. The Board or officer to whom the appeal lies may reject the appeal without hearing the respondent (if any) ; if it or he, as the case may be, admits the appeal, it or he may reverse, modify or confirm the order appealed against, or it or he may direct such further investigation to be made or such additional evidence to be taken as it or he may think necessary, or it or he may itself or himself as the case may be, take such additional evidence.

150. In any case in which an appeal is admitted the Appellate Court may, if it thinks fit, pending the result of the appeal, direct the order appealed against to be suspended.

151. The Board, a Deputy Commissioner, a Settlement Officer and a Survey Officer may call for the proceedings held by any officer subordinate to it or him, and pass such orders thereon as it or he thinks fit.

Note:—An order once passed in any case cannot be revised either by the officer who passed it or by his successor in office. But this order does not apply to summary registration orders.

Power to make rules.

152. The State Government may make rules consistent with this Regulation, to regulate the procedure of officers in the discharge of any duty imposed on them by or under this Regulation, and may by such rule confer upon any officer any power exercised by a Civil Court in the trial of suits.

Procedure in Appellate Court on appeal.

Suspension of order appealed against.

Power to call for proceedings of subordinate officers.

NOTES

CHAPTER VIII

Procedure (Ss. 140-152)

Chapter VIII lays down the procedure to be followed in disposing of revenue cases, and provides for appeals and revision against the orders of the Revenue Officers, and prescribes the period within which appeals may be preferred. This Chapter further defines the powers of the appellate as well as the revisional authorities.

1. Place of holding Courts and power to summon to give evidence etc. (140-142) :

The Assam Board of Revenue can hold Court at any place within the State of Assam. Under the Assam Board of Revenue Regulation I, 1963, the Head Office of the Board of Revenue has been established at Guwahati. The Board of Revenue may, however, by notification in the Official Gazette, transfer the Head Office to any other place within the State. The Chairman of the Board of Revenue may also direct any case to be heard in any place within the State.

The following officers under the Regulation, namely, the Deputy Commissioner, Assistant Commissioner, Extra Assistant Commissioner, Settlement Officer, Survey Officer, Assistant Settlement Officer and Assistant Survey Officer can hold his Court at any place within the district or the sub-division to which he is appointed.

The Board of Revenue and the above classes of officers have also the power to summon any person to give evidence or to produce documents and other things for the purpose of any enquiry or investigation conducted under the Regulation. All persons are bound to attend the Court in person or by authorised agent in compliance with the summons issued to them, and to give evidence, or to produce the documents as directed. The Board of Revenue and the officer making the requisition can impose a daily fine not exceeding fifty rupees on the person who fails to appear, until he has complied with the requisition. In the case where the penalty imposed by an officer exceeds five hundred rupees, the Deputy Commissioner has to report the case to the Board of Revenue, and no further fine can be imposed without authority of the Board.

2. Provision for referring disputes to arbitration (S.143):

Provision has been made in section 143 for referring

any dispute to arbitration. A dispute can be referred to arbitration only with the consent of the parties. The power to refer a dispute to arbitration is given to the State Government, Deputy Commissioner, Sub-divisional Officer, Settlement Officer, Assistant Settlement Officer, Survey Officer and Assistant Survey Officer. The officer referring the case will discharge the function of the Civil Court.

3. Appeals (147) :

(A) Authority to whom appeal lies :

Appeals against the orders of the Revenue Officers shall lie under the Regulation as follows :

- (a) to the Assam Board of Revenue from orders, original or appellate, passed by the Deputy Commissioner, Settlement Officer or Survey Officer ;
- (b) to the Deputy Commissioner, from orders passed by a Sub-divisional Officer, an Assistant Commissioner or Extra Assistant Commissioner ;
- (c) to the Settlement Officer from orders passed by an Assistant Settlement Officer ;
- (d) to the Survey Officer from, orders passed by an Assistant Survey Officer.

(b) Orders against which no appeal will lie :

Under the Regulation orders passed by a Revenue Officer are generally appealable, but exception has been made in case of certain orders against which no appeal shall lie. The orders against which appeals have been barred are :

- (i) orders of an Assistant Settlement Officer or Assistant Survey Officer passed under sections 21 and 22, i.e., when orders are passed requiring persons to give information or assistance for purposes of survey, and requiring the persons concerned to erect and repair boundary-marks on the land ;
- (ii) orders passed by a Survey Officer or Settlement Officer under sections 21, 22 and 24, and orders apportioning the expenses of erecting and repairing boundary-marks ;
- (iii) orders of the Deputy Commissioner, Settlement Officer or Survey Officer, whether original or passed in appeal, imposing or confirming a fine not exceeding fifty rupees ;
- (iv) orders of the Deputy Commissioner under section 79 setting aside or refusing to set aside the sale ;
- (v) any decision given in accordance with an award of

To whom do appeals lie ? What are the powers of an appellate authority ? (G. U. '68)

Who are appellate authorities ? State the period of limitation for appeals.
(G. U. '76)

arbitrators appointed under section 143, except in the case of fraud or collusion ;

(vi) orders passed under section 148, admitting an appeal after the period of limitation has expired ; and

(vii) orders expressly declared by the Regulation to be final subject to the provision of section 151.

(c) Time within which appeals are to be preferred (S. 148)

Section 148 prescribes the period within which an appeal can be preferred. Thus :

(i) An appeal to the Assam Board of Revenue from orders, original or appellate, passed by the Deputy Commissioner, Settlement Officer or Survey Officer is to be presented within 2 months from the date of the order appealed against.

(ii) An appeal to the Deputy Commissioner, Settlement Officer or Survey Officer against the orders of their subordinate officers is to be preferred within thirty days from the date of the order appealed against :

In computing the period of limitation, the time required for obtaining the copy of the order and the day on which the order was passed are to be excluded. The appellate authority can, however, admit an appeal presented beyond the prescribed period if sufficient cause to the satisfaction of the appellate authority is shown for not presenting the appeal within time.

The provisions of section 148 will apply where the period of limitation has not been specially provided in the Regulation, or in the rules issued under the Regulation.

5. Powers of the appellate authority (Ss. 142-150) :

The appellate authority (i.e., the Board of Revenue, or the officer to whom appeal lies) has the power :

(i) to admit the appeal, or
 (ii) to reject the appeal without hearing the respondent.

When an appeal is admitted :

(1) the appellate authority after hearing the case can set aside, modify or confirm the order appealed against ; or

(2) the appellate authority may, if it thinks necessary, direct further investigation to be made, or additional evidence to be taken, or it may itself take such additional evidence.

(3) the appellate authority, while admitting an appeal,

What are the powers of an appellate authority ?
(G. U. '68.)

Who are the
revisional
authorities
(G.U. '76)

can also order for stay of the operation of the impugned order pending disposal of the appeal.

6. Powers of revision (S. 151) :

Section 151 of the Regulation has apparently given very wide powers to the Assam Board of Revenue, the Deputy Commissioner, Settlement Officer and Survey Officer to call for the proceedings held by a subordinate officer and to pass necessary orders. This power under section 151 is in the nature of a revisional power, and no period of limitation is fixed for exercise of such power. The superior authorities mentioned above can exercise revisional powers under section 151, either at the instance of the parties or of their own motion, and see to the legality or propriety of any order passed, and can revise the order.

7. Recovery of fines, costs etc, (Ss. 144-146) :

Provisions for recovery of other dues to the Government realisable as arrear of land-revenue are made in sections 144-146. The dues that are realisable as arrear of land-revenue are :

- (1) all fees, rents, fines, costs and other money payable under the Regulation or the rules made thereunder ;
- (2) all fees, rents and royalties payable to Government for use and occupation of land or water, or on account of any products thereof and also other dues to the Government under any grant, lease, security-bond or contract which provides for their recovery ;
- (3) any amount for which a person is liable as surety for a defaulter or Revenue Officer ; and
- (4) any sum due under the Regulation and collected by a Revenue Officer who has absconded or is about to abscond without accounting for the amount. In this case the Deputy Commissioner can issue a warrant for the apprehension of the Revenue officer concerned.

In all the above cases proceedings for the recovery of the amounts can be taken under Chapter V of the Regulation.

8. Rules (S. 152) :

Section 152 has given powers to the State Government to frame rules for purpose of regulating the procedures in a proceeding conducted under the Regulation. Rules 181-188 have been framed relating to procedure, process fees and the mode of serving the processes. Rule 186 provides that the provisions of the Civil Procedure Code will apply to the issue service and return of processes on parties and witnesses in any revenue case, appeal or investigation, pending before a Revenue Officer or Settlement Officer.

CHAPTER IX

Miscellaneous

153. (1) No proceedings under this Regulation shall be affected by reason of any mistake in the name of any person thereby rendered liable to pay any sum of money, or in the description of any estate in respect of which he is rendered liable to pay, or by reason of any other informality : provided that the provisions of this Regulation, and of the rules passed under this Regulation have been substantially complied with.

(2) No proceedings under this Regulation shall be affected by reason of any irregularity or omission in the publication or service of any notice or proclamation thereunder, unless it is proved that some material injury was caused by such irregularity or omission.

153. A. Any proceeding under the Regulation pending before the Commissioner immediately before the date of commencement of this Act (Assam Act XXII of 1962) shall be deemed to have been instituted before the Board, and shall be decided as if it were duly instituted before the Board.

154. Except when otherwise expressly provided in this Regulation, or in rules issued under this Regulation, no Civil Court shall exercise jurisdiction in any of the following :—

- (a) questions as to the validity or effect of any settlement, or as to whether the conditions of any settlement are still in force ;
- (b) questions as to the amount of revenue, tax, cess, or rate to be assessed ; and the mode, or principle of assessment ;
- (c) the formation of the record-of-rights, or the preparation, signing, or alteration of any documents contained therein ;
- (d) claims of persons to perfect partition,
- (e) claims of persons to imperfect partition, except in cases in which a perfect partition could not be claimed from, and has been refused by, the revenue authorities on the ground that the result of such partition would be to form a separate estate liable for an annual amount of revenue less than five rupees.
- (f) the distribution of the land or allotment of the revenue on partition ;
- (g) claims connected with, or arising out of, the collection of land revenue, or any process for the

Proceedings under this Regulation, unaffected by mistake, misdescription or irregularity.

Boards power to hear pending proceedings.

Matters exempted from cognizance of Civil Court.

recovery of an arrear of land revenue or any sum which is by this Regulation, or by other enactment for the time being in force, realisable as an arrear of land revenue ;

- (h) claims to occupy or resort to lands under sections 13 and 14, and disputes as to the use and enjoyment of such lands between persons permitted to occupy or resort to the same ;
- (i) claims to have an allotment made under section 13 or section 14, and objections to the making of such allotment ;
- (j) claims to a remission or refund of any revenue, cess, tax, rate, fee, or fine payable or paid under this Regulation or leviable under any enactment for the time being in force as an arrear of land revenue ;
- (k) claims to set aside a decision passed in accordance with an award of arbitrators ;
- (l) claims to any office connected with the revenue administration or to any emolument appertaining to such office, or in respect of any injury caused by exclusion, suspension, or removal therefrom ; and
- (m) any matter respecting which an order expressly declared by this Regulation to be final, subject to the provisions of section 151, has been passed ;
- (n) any matter regarding ejectment of any person from a land over which no person has acquired the right of a proprietor, land-holder or settlement-holder, and the disposal of any crop raised, or any building or other construction erected without authority on such land.

(2) In all the above cases jurisdiction shall rest with the revenue authorities only.

(3) Notwithstanding anything in section 265 or section 396 of the Code of Civil Procedure [now section 54 and rules 13 and 14, Order XXVI of the Code of Civil Procedure, 1908 (Act V of 1908)] a Civil Court may, in the case of a claim for an imperfect partition with respect to which its jurisdiction is not barred by this section, exercise the same-powers in making the partition of a revenue-paying estate as it is competent to exercise in making the partition of a revenue-free estate.

(4) When a Civil Court has made an imperfect partition of a revenue-paying estate, the amount of revenue for which each portion of the divided estate is, as between that

portion and the other portions, to be liable shall be determined by the Deputy Commissioner in the same manner as if the partition had been carried out by himself under Chapter VI of this Regulation.

Note :—(1) Section 154 of the Assam Land and Revenue Regulation which provides that no Civil Court shall exercise jurisdiction in the distribution of land or allotment of revenue on partition is no bar to any unrecorded co-sharer, who was not allowed to intervene in partition proceedings before the revenue authorities, instituting a suit for a declaration of his title to a share of the estate and for confirmation of possession, when the partition proceedings before the revenue authorities had not yet been completed. (*Habiram Das and others versus Hemnath Sarma and others*,—19 C. W. N. 1068, May 1915).

(2) The Civil Court has jurisdiction to partition any specific lands included in a revenue-paying estate provided that a partition of the entire estate is not involved (*Rajendra Narain Chowdhury versus Satish Chowdhury* I. L. R. 59 Cal 948 (February 1925).

(3) Under section 154 (1) (c) read with section 96 of the Assam Land and Revenue Regulation, actual partition, perfect or imperfect of revenue paying properties must be made by the revenue authorities.

But the jurisdiction of the Civil Court to determine the rights of the parties to the property in dispute as well as the shares to which they are entitled has not been taken away by the Regulation in question, and the Civil Court must also decide whether the property is liable to partition or not. (*Rukay Bibi versus Nazira Banu*.—I. L. R. 55 Cal. 44 June 1928).

154.-A (1) Notwithstanding anything contained in any judgment, decree or order of any court, any notice served or any action taken or any penalty imposed or any ejectment done under sub-rules (1), (2), (3a) and (3b), (4), (5) and (5a) of Rule 18 of the Settlement Rules made under the Regulation shall be and always be deemed to have been validly done.

(2) No suit or other proceeding shall be maintained or continued in any court against the Government or any person or authority for any act done or purported to have been done under sub-rules (1), (2), (3a) and (3b), (4), (5) and (5a) of Rule 18 of the Settlement Rules made under the Regulation.

(3) No court shall enforce any decree or order against the Government or any other person for any action taken or purported to have been taken under sub-rules (1), (2), (3a) and (3b), (4), (5) and (5a) of Rule 18 of the Settlement Rule made under the Regulation.

155. The State Government may, in addition to the other matters for which they are empowered by the Regulation to make rules, make rules consistent with the Regulation relating to the following matters—

(a) the person by whom, and the time, place, and

Additional power
to make rules

manner at or in which, anything is to be done, for the doing of which provision is made in this Regulation or the rules made thereunder ;

- (b) the mode in which notices, proclamations, summonses, warrants and other processes issued under this Regulation shall be issued, published, and served, and the fees to be charged for the issue, publication and service of such processes ;
- (c) the costs of all proceedings under this Regulation ;
- (d) the manner in which representatives shall be appointed to act in matters relating to this Regulation on behalf of any body of settlement-holders or persons entitled to or with whom it may be desirable to make, a settlement :
- (e) the granting of licences to prepare or collect or the farming of the right of preparing or collecting, rubber, lac and other forest produce upon land over which no person has the rights of a proprietor, land-holder, or settlement-holder ;
- (f) the granting of licences, or the farming of the right, to work mines, stones, and lime quarries, salt-wells and oil-wells, to fish in fisheries proclaimed under section 16, and to carry on goldwashing operations ;
- (g) the payments in consideration of which, and the conditions on which, such licences or farms may be granted ; and
- (h) generally to carry out the provisions of this Regulation.

156. The State Government may, in making any rule under this Regulation, provide that a breach of the rule, in addition to any other consequence which would ensue from such breach, be punishable with fine which may extend to two hundred rupees, or, when such breach, is a continuing breach, to fifty rupees for each day during which such breach continues, or, on conviction before a Magistrate, with imprisonment which may extend to six months or with fine upto one thousand rupees or with both.

Making and publication of rules.

157. (1) The State Government shall, before making any rules under this Regulation, publish in such manner as may, in their opinion, be sufficient for giving information to persons interested, a draft of the proposed rules, with a notice specifying a date at or after which the draft will be

Penalty for breach of rules.

taken into consideration ; and shall, before making the rules, receive and consider any objection or any suggestion which may be made by any person with respect to the draft before the date so specified.

(2) If, on such consideration of the draft, any modification is made, the State Government shall determine whether it is necessary to republish the draft under this section.

(3) (Omitted)

(4) All rules made by the State Government under this Regulation shall be published in the official Gazette, and shall thereupon have the force of law.

158. (Deleted) .

159. All powers conferred by this Regulation may be exercised from time to time as occasion requires.

Powers exercisable from time to time.

NOTES :
CHAPTER IX

Miscellaneous (Ss 153-159.)

This chapter deals with miscellaneous matters. An important provision has been made in this chapter whereby the jurisdiction of the Civil Court is excluded in respect of certain matters, and in respect of which the revenue authorities will have exclusive jurisdiction.

1. Proceedings when not to be affected by irregularities (S. 153) :

A proceeding under the Regulation will not be affected merely because of any mistake in the name of the person liable to pay any sum of money, or in the description of any estate in respect of which he is rendered liable to pay, or by reason of any other informality, provided there has been a substantial compliance with the provisions of the Regulation and the rules made thereunder. Any irregularity or omission in the publication or service of a notice or proclamation will also not affect the proceedings, unless it is proved that it has caused some material injury. Such formal defects are curable.

2. Exclusion of the jurisdiction of the Civil Court (S. 154) :

"Exclusion of the jurisdiction of the Civil Court is not to be readily inferred but such exclusion must either be explicitly expressed or clearly implied. Even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure" (Privy Council). Section 154 of the Regulation has excluded the jurisdiction of the Civil Court from taking cognizance of the following matters :

To what extent the Regulation has ousted the jurisdiction of the Civil Court?
(G.U. '75, '79)

In what different matters is the jurisdiction of Civil Court ousted?
(G.U. '77)

(a) questions as to the validity or effect of any settlement, or as to whether the conditions of any settlement are still in force. But where an existing right under the Regulation has been affected by the settlement, the Civil Court will have jurisdiction to entertain a suit for declaration of title to, and for possession of the land.

(b) questions as to the amount of revenue, tax, cess or rate to be assessed, and the mode or principle of assessment. At every re-settlement there is invariably a new classification and a new rate of assessment.

The assessment so made by the revenue authorities is final ;

- (c) the formation of the record-of-rights, or the preparation, signing or alteration of any document contained therein ;
- (d) claims of persons to perfect partition ;
- (e) claims of persons to imperfect partition, except in the case where perfect partition is not permissible on the ground that the annual revenue payable in respect of a divided portion would be less than five rupees, and the revenue authority has refused to entertain the claim for such partition. On such refusal, the Civil Court will have jurisdiction over claims for imperfect partition. But even in such cases of imperfect partition by the Civil Court, the Deputy Commissioner alone and not the Civil Court can determine the revenue payable by each portion of the divided estate. Section 154, however, does not purport to take away the jurisdiction of the Civil Court to determine the rights of the parties to the property in dispute as well as the shares to which they are entitled ;
- (f) distribution of the land or allotment of the revenue on partition ;
- (g) claims connected with the collection of land-revenue, or any process for the recovery of arrear revenue or any sum realisable as arrear of land-revenue ;
- (h) claims to occupy lands reserved as grazing grounds, or lands allotted for jhum cultivation, and disputes between persons regarding use and enjoyment of such lands ;
- (i) claims to have an allotment of lands as grazing ground or for jhum cultivation under sections 13 and 14 respectively, and objections against such allotment ;
- (j) claims to remission or refund of revenue, cess, tax, rate, fee or fine payable or paid under the Regulation, or leviable as arrear of revenue under any enactment ;
- (k) claims to set aside a decision passed in accordance with an award of arbitrators ;
- (l) claims to any office connected with the revenue administration or to emoluments or in respect of any injury caused by exclusion, suspension or

removal therefrom ;

- (m) any matter respecting which an order is declared by the Regulation to be final subject to the provisions of section 151. The decision of the Settlement Officer determining the boundary disputes between the settlement-holders, and also between the settlement-holders and the Government (S 23), order of the Settlement Officer as to the person to whom settlement, should be offered, the revenue to be assessed and the nature and term of settlement to be offered (S. 39), are some such orders which are declared to be final subject to the provisions of section 151 ;
- (n) any matter regarding ejection of persons from lands at the disposal of the Government, and also regarding disposal of the crops or structures on such lands (Rule 18).
- (o) any matter covered by Chapter X of the Regulation relating to tribal belts or blocks (S. 167).

The plea as to the bar of jurisdiction of the Civil Court under Section 154 is, however, not available where there is an express provision in the Regulation by which the matter can be brought to the Civil Court. Thus in section 39 it will be found that when settlement is wrongly concluded with a person depriving another who has a legal right to settlement, that other person to be deprived can bring a suit in the Civil Court for declaration of his title to, and for recovery of possession of the land.

In the matters listed above the revenue authorities alone will have jurisdiction to decide. When, however, the revenue authorities, which are of limited jurisdiction, act in excess of their jurisdiction, their acts become liable to be scrutinised by the Civil Court and are liable to be set aside.

3. Powers to make rules (S. 155) :

The different Chapters of the Regulation have made provisions for making rules. Section 155 has given an additional power to the state Government to frame rules in respect of the following matters :

- (i) the person by whom, and the time, place manner in which an act authorised by the Regulation can be done ;
- (ii) the mode in which notices, proclamations, summons, warrants and other processes are to be

issued, published and served, and fees chargeable for such processes ;

- (iii) the costs of all proceedings under the Regulation ;
- (iv) the manner in which representatives are to be appointed to act on behalf of any body of settlement-holders ;
- (v) the granting of licences to prepare or collect rubber, lac or other forest-produce ;
- (vi) the granting of licences to work mines, stones and lime quarries, salt-wells and oil-wells, or to fish in proclaimed fisheries ; and
- (vii) generally to carry out the provisions of the Regulation.

The State Government have accordingly framed rules under this section and also under the provisions made in the different Chapters of the Regulation. Under section 157 (4) all rules made under this Regulation have the force of law. The various rules so framed relate to :

- (1) Settlements :— Rules 1-82F issued under sections 12 and 29,
- (2) Allotment of grazing grounds :
— Rules 83-96 issued under section 13.
- (3) Survey :— Rules 97-107 issued under sections 26, 27, 152 and 155.
- (4) Registration :— Rules 108-129 issued under Chapter IV.
- (5) Arrears of revenue and the mode of recovering them :
— Rules 130-170 issued under Chapter V.
- (6) Partition and union of estates :
— Rules 171-180 issued under sections 114, 121 and 155.
- (7) Procedure, process fees and mode of serving processes:
— Rules 181-188 issued under sections 129, 152 and 155.
- (8) Right of entry by mining licencees :
— Rules issued under section 155.
- (9) Fishery settlements :
— Rules issued under sections 155 and 156.
- (10) Matters coming under Chapter X of the Regulation :
— Rules separately framed under section 171.

CHAPTER X

Protection of backward classes

Protection of certain classes

160. (1) Notwithstanding anything hereinbefore contained, the State Government may adopt such measures as it deems fit for the protection of those classes who on account of their primitive condition and lack of education or material advantages are incapable of looking after their welfare in so far as such welfare depends upon their having sufficient land for their maintenance.

(2) The State Government may, by notification in the official Gazette, specify the classes of people whom it considers entitled to protection by such measures as aforesaid.

Constitution of compact areas.

161. The protective measures may include the constitution of compact areas, in regions predominantly peopled by the classes of people notified under the provisions of sub-section (2) of section 160, into belts or blocks. The boundaries of the areas so constituted shall as far as possible coincide with mauza boundaries or be otherwise easily distinguishable.

Extension of Chapter X to such areas.

162. (1) The state Government may, by notification in the official Gazette, direct that the provisions of this Chapter shall apply to the areas, or any of the areas, constituted into belts or blocks under the provisions of section 161. On such application, the disposal of land by lease for ordinary cultivation, the nature and extent of rights conveyed by annual or periodic leases, the termination or forfeiture of such rights, the ejectment of persons in occupation who have no valid right in the land, the management or letting out in farm of land in certain circumstances by the Deputy Commissioner, and other allied or connected matters shall, so far as possible, be governed by the provisions of this Chapter and the rules made thereunder. Where this is not possible, the Deputy Commissioner shall be guided by the spirit of the provisions of the foregoing Chapters of the Regulation and the rules made thereunder.

(2) Notwithstanding anything to the contrary in any law, usage, contract or agreement no person shall acquire or possess by transfer, exchange, lease, agreement or settlement any land in any area or areas constituted into belts or blocks in contravention of the provisions of sub-section (1).

(3) From and after the commencement of the Assam Land and Revenue Regulation (Amendment) Act, 1984, no document evidencing any transaction for acquisition or

possession of any land by way of transfer, exchange, lease, agreement or settlement shall be registered under the Indian Registration Act 1908 if it appears to the registering authority that the transaction has been effected in contravention of the provisions of sub-section (2).

(4) The State Government may in like manner, direct that the provisions of this Chapter shall cease to apply to any area or areas or portions of any area or areas, to which they have been applied under the provisions of sub-section (1).

(5) The application of the provisions of this Chapter to any area as aforesaid will not affect—

(a) land settled, for special cultivation or purposes ancillary to special cultivation (including grants made for tea cultivation).

(b) lakheraj, nisfkheraj or special estates settled with non-cultivators for their maintenance, which land and estates and the rights and interests herein shall continue to be governed by the provisions of the foregoing Chapters of the Regulation and the rules made thereunder.

163. (1) The disposal of land, in areas to which the provisions of this Chapter apply, for the purpose of ordinary cultivation or purposes ancillary thereto, shall be in accordance with such policy and procedure as may be adopted and directed by the State Government.

*Disposal of land
for purpose of
cultivation.*

(2) In adopting and directing such policy or procedure the State Government shall take into consideration—

(a) the *bona fide* needs of those who are permanently residing in the area on the date of the notification under sub-section (1) of section 162.

(b) the *bona fide* needs of those who are temporarily residing in the area, but who are settlement-holders of land within the area, on the aforesaid date, and who are likely to undertake to become permanently resident therein within a reasonable time.

(c) the *bona fide* needs of members of the classes notified under sub-section (2) of section 160, who are living elsewhere in the district, and

(d) if the extent of cultivable land available for settlement in the belt or block be large enough, the *bona fide* needs of other classes of persons residing in the neighbourhood of the belt or block. Preference shall be given to persons whose religion, mode of life, agricultural customs and habits are more akin to those of the classes for whose

Rights of settle-
ment-holders and
land-holders.

Ejectment
eviction.

and

protection the belt or block was constituted.

164. (1) A settlement-holder other than a land-holder shall have no rights in the land held by him beyond such as are expressed in his settlement lease.

(2) A land-holder shall have a right of use and occupancy in the land held by him subject to any restrictions or modifications prescribed in rules made under this Chapter, and to the provisions of section 9.

(3) The rights of a land-holder derived from a periodic lease in respect of land to which the provisions of this Chapter has been applied, and issued before the date of the notification under sub-section (1) of section 162 shall, for the period during which the area remains subject to the provisions of the Chapter, be the same as described in sub-section (2).

165. (1) In the case of unsettled land, any person who without valid authority has encroached upon or occupied it shall be liable to ejectment forthwith.

(2) In the case of annually settled land, persons other than settlement-holders, members of their families and hired servants, if found in occupation thereof, shall be liable to ejectment forthwith. The settlement with the settlement-holder shall, unless terminated earlier for infringement of the conditions of the lease or for any action contrary to or inconsistent with the rights conferred on him by the lease, automatically terminate at the end of the period covered by the lease.

(3) (a) In the case of periodically settled land, persons who have entered into occupation without valid authority from the land-holder or whose entry or occupation is or has come about in a manner inconsistent with the provisions of this Chapter shall be liable to eviction.

(b) Such eviction shall be preceded by service of notice requiring the occupants to vacate the land, and to remove all buildings and other constructions erected, and crops raised, within a period not exceeding one month from the date of receipt of the notice.

(c) The Deputy Commissioner may, after the persons concerned have evacuated or been evicted from the land, take the land under his own management, or may let it in farm, for such period as he thinks fit, but shall give the land-holder a reasonable opportunity of undertaking in writing that he will do everything in his power to prevent unauthorized occupation by other persons in future, and of agreeing

in writing that, on his failure to do so, he will forfeit his rights and status of a land-holder in respect of the land. If satisfied with an undertaking and agreement as aforesaid, the Deputy Commissioner shall accept them, and they shall be deemed to govern the land-holder's future rights and status in respect of the land, and the land shall then be restored to the land-holder. If the land-holder subsequently contravenes the undertaking as aforesaid, or any of the provisions of section 9, he shall be liable to forfeiture of his rights and status in respect of the land, which will then be available for settlement afresh, subject to any lawful encumbrances subsisting upon it.

166. No suit shall lie against any public servant for anything done by him in good faith under this Chapter.

Immunity.

167. No Civil Court shall exercise jurisdiction in any of the matters covered by this Chapter.

Ban on jurisdiction.

168. The State Government may, by notification in the official Gazette, invest any Revenue Officer with the powers of the Deputy Commissioner under all or any of the provisions of this Chapter within such limits with such restrictions and for such period as may be specified, and may withdraw from any such officer any of the powers so conferred upon him.

Investment of powers.

169. (1) an appeal shall lie under this Chapter —

Appeals

(a) to the Deputy Commissioner, from any original order passed by any officer subordinate to him, and

(b) to the Board from any original order passed by a Deputy Commissioner.

(2) Except in regard to orders relating to periodically settled land, an order passed on appeal under sub-section (1) clause (a) shall be final.

(3) In regard to orders relating to periodically settled land an appeal will lie to the Board from an appellate order of the Deputy Commissioner.

170. The Board or the Deputy Commissioner may call for the proceedings held by any officer subordinate to it or him, and pass such orders thereon as it or he thinks fit.

Revision.

171. The State Government may, by notification in the official Gazette, make rules for purpose of carrying out the provisions of this Chapter.

Rules.

NOTES :

CHAPTER X

Protection Of Backward classes (Ss. 160-171) :

Chapter X was brought in and added to the Regulation by the Assam Land and Revenue Regulation (Amendment) Act, 1947. This chapter is intended for the protection of the interests of certain backward classes inhabiting an area constituted into a belt or block. All rights in land, including the restrictions in the transfer and possession of land, within the belt so constituted, are governed by the provisions of this chapter and the rules made thereunder.

1. Classes of people entitled to protection (Ss. 160-161):

The provisions of Chapter X are intended for the protection of the interests of certain classes of people who are lacking in education, and socially and economically backward, and whose welfare depends upon their having sufficient lands for their maintenance. The classes of people who are entitled to the protective measures are to be notified by the State Government in the official Gazette; and accordingly the following classes of people have been notified as persons entitled to the protection :

- (1) Plains tribals.
- (2) Hills tribals.
- (3) Tea-garden tribals.
- (4) Santhals.
- (5) Scheduled Castes, and
- (6) Nepali cultivator-graziers (since excluded).

2. Protective measures under Chapter X.

The protective measures provided in Chapter X include the following :

- (a) constituting compact areas into belts or blocks, the areas being predominantly inhabited by the backward classes notified by the Government;
- (b) laying down guiding principles for settlement of waste lands by lease for ordinary cultivation;
- (c) defining the rights that may be acquired in land within the belt, modifying the existing rights, and providing for termination or forfeiture of such rights, and also restricting transfers of land by sale, mortgage, lease, agreement, exchange or otherwise, and limiting the right to acquire or possess lands

What are the protections given to the backward classes under the Regulation.
(G.U. '72, '77)

What are the protective measures for backward classes under the Regulation? Do you regard these measures as discriminatory?
(D.U. '68)

What are the provisions for protection of backward classes?
(G.U. '77)

within the belt ; and

(d) providing for ejectment of person in unauthorised occupation of land within the tribal belt.

(A) Constitution of Tribal belt or blocks (Ss. 161-162):

For the purpose of the protective measures under Chapter X, the State Government may constitute the areas, predominantly peopled by the notified classes of persons, into belts or blocks. The belts or blocks are so constituted that these may be easily distinguishable, and are generally constituted so as to coincide with the mauza boundaries. The belts or blocks thus created are commonly called Tribal belts or blocks. After the creation of the belt or block the provisions of Chapter X are made applicable in the areas constituting the belt by notification in the official Gazette

Write notes on
Tribal Belts
(G.U. '79)

On such application the special provisions of Chapter X will govern all matters relating to rights in land, settlement of waste land by lease for ordinary cultivation, ejectment of persons in unauthorised occupation and such other allied matters; and where it is not possible, the Deputy Commissioner will be guided by the spirit of the general provisions of the other Chapters of the Regulation.

The provisions of Chapter X will not, however, apply to the following lands :

- (i) land settled for special cultivation or purposes ancillary to special cultivation (including grants made for tea cultivation) : and
- (ii) *lakheraj, nisf-kheraj* or special estates settled with non-cultivators for their maintenance.

The State Government may also by notification declare withdrawal of the provisions of Chapter X from any area or areas to which they were applied.

(B) Disposal of waste lands (S. 163) :

Lands at the disposal of the Government within the tribal belts are to be settled with the following classes of persons only, considering their bonafide needs :

- (i) persons who are permanently residing in the area on the date of the notification by which the provisions of Chapter X are made applicable in the area ;
- (ii) persons who are settlement-holders within the area, and though temporarily residing in the area on the date of the notification enforcing the provisions of Chapter X, are likely to become permanent residents therein ;

- (iii) persons of the notified classes residing elsewhere in the district ; and
- (iv) persons residing in the neighbourhood of the belt, in case large areas are available for settlement. In this case persons having their mode of life, religion and agricultural customs and habits more akin to the notified classes are to be preferred over others.

(C) Rights over land and termination or forfeiture of such rights (S. 164) :

The rights of a person in land held under annual and periodic leases within the tribal belt are restricted by the provisions of Chapter X and the rules made thereunder.

(i) Land held under an annual lease :

An annual lease means a lease granted for one year only. In the case of land held under an annual lease the settlement-holder does not acquire any right beyond such as are expressed in his settlement lease. The settlement-holder under annual lease has only a right of user for the year for which it is given. He has no right to transfer or sub-let the land, and on his death his heirs can inherit the property only for the remainder of the term. The lease automatically terminates on the expiry of the term, and no non-renewal notice is necessary. The lease is also liable to cancellation if such land is transferred or sub-let. If, however, the land is mortgaged to Government or to a State sponsored Co-operative Society, the Government may allow renewal of the lease.

(ii) Land held under a periodic lease :

A periodic lease, except in the case of town land, means a lease granted for a period longer than one year, and in the case of town land, for a period longer than three years. A periodic lease, the term of which is not less than ten years, conveys to the lessee the rights of a land-holder under the Regulation. In the tribal belt, the land-holder has a right of use and occupancy in the land subject to the restrictions and modifications prescribed in the rules made under Chapter X and to the provisions of section 9. His right to transfer, or sub-let the holding or any part thereof is limited only to the following classes of people.

- (a) a person who at the time of the notification by which the provisions of Chapter X are made applicable, is permanently residing in the area, or is a settlement-holder in the area and though temporarily residing is likely to become a permanent resident therein ; and

(b) notified classes of people, i.e. notified under section 160 (2), residing elsewhere in the district.

He can, however, mortgage the land to the Government or to a State sponsored Co-operative Society functioning within such belt or block. When transfers are made contrary to it, the periodic lease is liable to cancellation with the approval of the State Government. In that event the land-holder will forfeit his rights and status in respect of the land so transferred. Further, the rights of a land-holder, who obtained settlement of land before application of Chapter X in the area, will be subject to the same limitations. No person can acquire or possess land within the tribal belt by transfer, lease, exchange, mortgage, agreement or settlement made in contravention of the provisions of Chapter X or the rules made thereunder; and no document evidencing such transaction is to be registered under the Indian Registration Act, 1908.

(D) Eviction of unauthorised occupiers (S. 165) :

Person in unauthorised occupation of any land within the tribal belt are liable to be evicted therefrom. Different procedures are laid down for eviction from different classes of lands, namely :

(i) unsettled lands, i.e., lands at the disposal of Government.

(ii) lands held under an annual lease ; and

(iii) lands held by a land-holder under a periodic lease.

(i) In the case of unsettled land, i.e., waste land at the disposal of the Government, any person found to be in unauthorised occupation are to be evicted forthwith. If, however, the land is found to be in occupation of (a) any member of the notified classes, or (b) a person residing permanently in the area, or a settlement-holder in the area, at the time of the notification enforcing the provisions of Chapter X, the Deputy Commissioner or the officer empowered may, after considering his bona fide and eligibility of the claim offer settlement of the land in accordance with the rules on realising the back revenue to be assessed from the date of his occupation. In case of eviction of such occupiers, the Deputy Commissioner will, however, issue a notice requiring the encroacher to vacate the land within a specified time, and may allow or disallow him to remove the structure and to harvest the crops standing on the land within the time so specified,

(ii) In the case of land held under an annual lease any person, other than the settlement-holder, members of his

family and his hired servants, found in occupation of the land is liable to be evicted forthwith. The Deputy Commissioner or the officer so empowered will, however, make a summary enquiry and if he is satisfied that the occupation is unauthorised, he will proceed to evict the encroacher, and any structure or crops found on the land will be liable to forfeiture to Government.

(iii) In the case of land held under a periodic lease, a person is liable to be evicted if he is found to occupy it without a valid authority from the land-holder, or if his occupation is inconsistent with the provisions of Chapter X and the rules made thereunder. The eviction in this case is to be preceded by the service of notice requiring him to vacate the land and remove the structures and crops on the land within a period not exceeding one month from the date of receipt of the notice. If the occupant fails to vacate the land, the Deputy Commissioner may forcibly enter into, and take possession of the land and destroy the structures and crops found thereon. After eviction the Deputy Commissioner may take the land under his own management, or let it out in farm, and direct the land-holder to give an undertaking in writing that in future he will prevent unauthorised occupation, and to agree in writing that on his failure to do so, he will forfeit his rights and status of land-holder. The Deputy Commissioner in that case will restore possession of the land to him. If the land-holder subsequently contravenes the undertaking, he will be liable to forfeiture of his rights and status in respect of the land, and the land will be available for settlement afresh subject to any lawful encumbrances.

(E) Whether provisions of Chapter X are discriminatory :

Chapter X has been enacted, as expressed in section 160, with a view to protecting the interest of those classes of people who are lacking in education and socially backward, and whose welfare depends upon their having sufficient lands for their maintenance. The persons, who are entitled to the protection, are to be notified by the Government who can be presumed to be aware of the needs of these people. To promote the welfare and economic progress of the notified classes, Chapter X has provided measures which will prevent lands, on which these people depend so much for their welfare and maintenance, from passing to more affluent persons residing outside the belt.

Chapter X has defined the nature and extent of the

What are the protective measures for backward classes under the Regulation ? Do you regard these measures as discriminatory ?
(D. U. '68)

rights conveyed by annual or periodic leases, and has imposed restrictions in the acquisition or possession of lands within the tribal belt by transfer, exchange, lease, agreement or settlement. A person acquires rights in land under a lease granted by or on behalf of the Government, and his rights are subject to the conditions of the lease. While granting the lease, the Government can impose conditions in the lease thereby restricting the rights in land.

Chapter X has also made provisions for guidance of the State Government with regard to settlement of waste lands by lease for ordinary cultivation. In the matter of settlement of waste lands and acquisition or possession of lands within the tribal belt, a classification has been made in which the following classes of people are brought under a separate group, namely :

- (i) classes, of people notified under section 160 (2) ;
- (ii) persons who are permanently residing within the tribal belt ; and
- (iii) persons who are settlement-holders within the belt, and though temporarily residing in the area are likely to become permanent residents therein.

This classification, it appears, has been made considering the needs of these people grouped together in one class being similarly situated. The varying needs of different classes of persons often require separate treatment. "It is well settled that a legislature for the purpose of dealing with the complex problems that arise out of an infinite variety of human relations, cannot but proceed upon some sort of selection or classification of persons upon whom the legislation is to operate. The consequence of such classification would undoubtedly be to differentiate the persons belonging to that class from others, but that by itself would not make the legislation obnoxious to the equal protection clause" in Art. 14 of the Constitution (Mukherjee J. in *Kathi Raning Rawat v State of Saurashtra*. AIR 1952 SC 123). Equality before the law or the equal protection of the law, as provided in Art. 14 of the Constitution "does not mean that every law must have universal application, for all persons are not, by nature attainment or circumstances in the same position". A classification is permissible if it is not "palpably unreasonable and arbitrary". In order to pass the test of permissible classification two conditions, as laid down by the Supreme Court, must be fulfilled, namely,

Chapter X—Protection of Backward Classes

- (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group ; and
- (ii) that the differentia must have a rational relation to the object sought to be achieved by the particular legislation,

What is necessary is that it must be based upon a real and substantial distinction bearing a reasonable and just relation to the object sought to be attained. If the law deals equally with all persons belonging to a well defined class, it cannot be regarded as objectionable or open to the charge of denial of equal protection. The equality clause of the Constitution does not forbid classification which rests upon reasonable grounds of distinction. Further, under Art 15 (4) of the Constitution it is permissible for the State to make provisions in order to advance the interests of the socially and educationally backward classes or for the Scheduled Castes and Scheduled Tribes. Governments of the States can specify as to who are backward classes that need special protection. Where the purpose of classification is the advancement of the weaker sections of people, it will not amount to discrimination within the meaning of Art. 15 of the Constitution of India.

Applying the above principles of law, the provisions of Chapter X cannot be said to be discriminatory. Chapter X does not make any discrimination as between the members of the class which is well-defined by the Act itself. This particular enactment itself gives reasons for the legislation. The object of this legislation is to promote the interests of the classes of people who are socially and economically backward, and whose interests can be protected by making provisions so that they may have sufficient lands for their welfare and maintenance. The protective measures as laid down in Chapter X are in conformity with, and are made towards achieving this object.

3. Powers of Revenue Officers (S. 168) :

All powers under Chapter X are to be exercised by the Deputy Commissioner. The State Government can, however, by notification in the official Gazette, invest any Revenue Officer with the powers of the Deputy Commissioner, and also withdraw the powers so conferred on him.

4. Appeals (S. 169) :

Section 169 provides for appeals against the orders passed by the officers under the provisions of Chapter X. An appeal will lie :

- (1) to the Deputy Commissioner from any order passed by an officer subordinate to him ;
- (2) to the Assam Board of Revenue from any original order passed by the Deputy Commissioner ; and
- (3) to the Assam Board of Revenue against an appellate order of the Deputy Commissioner if the order is in respect of land held under a periodic lease.

An appeal to the Board of Revenue will not lie against the order of the Deputy Commissioner passed in an appeal in respect of land held under an annual lease. In such case the order of the Deputy Commissioner passed in an appeal is final. Thus a second appeal to the Assam Board of Revenue will lie against an order passed by the Deputy Commissioner in an appeal only when the order is in respect of a periodically settled land.

5. Revision (S. 170) :

Section 170 of this chapter is similar to the provisions of section 151, and it gives wide powers to the Assam Board of Revenue and the Deputy Commissioner to call for the proceedings held by a subordinate officer, and to pass necessary orders. The Assam Board of Revenue and the Deputy Commissioner, in exercise of their powers of revision under this section, can call for the records and see to the legality or propriety of the proceedings held by the subordinate officers.

6. Exclusion of the jurisdiction of Civil Court (S. 167) :

Section 167 has expressly excluded the jurisdiction for the Civil Court in any of the matters covered by Chapter X..

7. Rules (S. 171) :

Section 171 has empowered the State Government to frame rules for the purpose of carrying out the provisions of Chapter X. Accordingly a separate set of rules have been framed. The rules so framed relate to rights in land including termination or forfeiture of such rights, settlement of waste land and eviction of persons in unauthorised occupation of lands within the tribal belt.

THE SCHEDULE

(See Section 2)

ENACTMENTS REPEALED

Part I.—*Bengal Regulations*

Number and year	Subject	Extent of repeal
XIX, 1793 —	Non-badshahi lakiraj grants	— The whole
XXXVII, „ —	Badshahi lakhiraj grants	— Do.
XLVIII, „ —	Quinquennial Register	— Do.
III, 1794 —	Collection of land revenue ; Embezzlement by Tahsildars.	— Do.
XV, 1797 —	Fees	— Do.
VIII, 1800 —	Pargana Register and Mutations	— Do.
I, 1801 —	Division of joint estates	— Do.
XI, 1811 —	Partition	— Do.
V, 1812 —	Leases by proprietors ; Collection of land revenue	— Do.
XVIII, „ —	Leases by proprietors ; Partition	— Do.
XIX, 1814 —	Partition	— Do.
II, 1819 —	Resumption	— Do.
IV, 1821 —	Assistant Collectors	— Do.
III, 1822 —	Board of Revenue	— Do.
VII, „ —	Settlement	— Do.
XI, „ —	Sales of land for arrears of revenue	— Do.
IX, 1825 —	Extending Regulation VII, 1822	— Do.
XIII, „ —	Lakhiraj tenures : Kanungeos	— Do.
XIV, „ —	Lakhiraj tenures	— Do.
III, 1828 —	Special Commissioners	— Do.
IV, „ —	Settlement	— Do.
I, 1829 —	Commissioners	— Do.
XI, 1833 —	Settlement ; Deputy Collectors	— Do.

Part II.—*Acts of the Governor General in Council*

Act	II, 1835 (1)	Assam Arracan ; Tenasserim	— So far as it refers to the Board of Re- venue.
„ VI, „ (1)	Khasi Hills and Cachar	— Do.	
„ XX, 1836 —	Partition	— The whole	
„ XXI, „ —	Ziles	— Do.	

(I) Acts II and VI of 1835 were entirely repealed by the Amending Act, 1891
(XII of 1891).

THE SCHEDULE—*concl.*

(See Section 2)

ENACTMENTS REPEALED—*concl.*Part II—*Acts of the Governor General in Council—concl.*

Number and year	Subject	Extent of repeal
Act XI, 1838—	Remuneration of Amins effecting Partitions	— The whole
“ XII, 1841—	Sales of land for arrears of revenue	— Do.
“ IX, 1847—	Assessment of land gained by alluvion	— Do.
“ XX, 1848—	Attendance before Collector—	— Do.
“ XXII, 1850—	Default of public accountants	— Do.
“ XLIV, “ —	Board of Revenue	— Do.
“ XXXI, 1858—	Settlement of alluvial lands	— Do.
“ XI, 1859—	Sales of land for arrears of revenue	— Do.

Part III—*Acts of the Lieutenant-Governor of Bengal in Council*

Act III, 1862—	Amending Act XI of 1859 —	—	The whole
“ VII, “ —	Repealing section 30, Regulation II, 1819	—	Do.
“ IV, 1864—	Amending Act XXI, 1836	—	Do.
“ III, 1868—	“ Regulation VII, 1822	—	Do.
“ IV, “ —	“ Act IX, 1847	—	Do.
“ VII, “ —	“ Act XI, 1859	—	Do.
“ II, 1871—	“ Act XI, 1859	—	Do.
“ VII, 1880—	Recovery of Public Demands	—	So far as it relates to recovery of arrears of land revenue.

Part IV—*Regulation under 33 Victoria, Chapter 3*

Regulation IV, 1875—	Realisation of arrears of revenue in Sylhet and Goalpara	—	The whole.
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